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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1383rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 13 March 2000, at 3 p.m.

Chairman: Mr. SHERIFIS
later: Mr. FALL
(Vice-Chairman)
later: Mr. SHERIFIS
(Chairman)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fourteenth and fifteenth periodic reports of Spain (CERD/C/338/Add.6; HRI/CORE/1/Add.2/Rev.2)

1. At the invitation of the Chairman, Mr. Pérez-Hernández y Torra, Mr. Aparicio Gómez-Lobo, Ms. Vevia Romero, Mr. Pérez Medina, Mr. Albaladejo Campos, Mr. de Ossorvo Almécija, Mr. Hernández Jiménez and Mr. de Palacio España took places at the Committee table.

2. Mr. PÉREZ-HERNÁNDEZ Y TORRA (Spain) said that the importance Spain attached to the presentation of its report was reflected in the composition of its delegation, with its wide range of expertise. Since the submission of the report there had been considerable changes aimed at strengthening the laws and policies to combat racial discrimination and intolerance. The Committee would be brought up to date on legislative reforms, policies and programmes, the situation of foreigners and some aspects of the Autonomous Communities. He looked forward to a constructive dialogue with the Committee which he hoped would demonstrate his Government's determined efforts to combat racial discrimination. There was clearly room for improvement in some areas, but what was important was the continued political will to avoid the recurrence of such situations and to strengthen the role of civil society in Spain which, like the Government, had consistently stood firm against social exclusion which often resulted in racial discrimination and intolerance.

3. Ms. VEVIA ROMERO (Spain), reporting on recent developments in legislation, said that the promulgation of Organization Act No. 4/2000 on the rights and freedoms of foreigners in Spain and their social integration had changed the situation of immigrants in Spain, with greater emphasis now being laid on their social integration. The Act included new features relating, inter alia, to residency, employment, health, social security, education, family reunion and minors. It also introduced amendments to articles 312, 515, 517 and 518 of the Criminal Code concerning penalties for those responsible for or associated with the illegal trafficking of workers and for those providing financial support for racist organizations. The introduction of a new section in the Criminal Code concerning offences against the rights of aliens and relating principally to matters of illegal trafficking filled a gap in existing legislation. Until very recently Spain had basically been a country of transit but it was now also a destination of clandestine workers and a series of preventive and remedial measures had been adopted pursuant to the new Act in that connection.

4. In June 1998 Spain had withdrawn its reservation with regard to article 22 of the Convention concerning its acceptance of the jurisdiction of the International Court of Justice. In January 1998, Spain had made the declaration under article 14 of the Convention recognizing the Committee's competence to receive and examine communications from groups or individuals alleging violations by the State of any of the rights in the Convention, but only following the exhaustion of all domestic remedies, and subject to communications being submitted to the Committee within a three-month period following the final judgement. The establishment of a

special administrative body for processing such complaints had not been deemed necessary given the broad civil, criminal and administrative guarantees provided inter alia by Act No. 62/78 relating to judicial protection of fundamental rights and the possibility of instituting amparo proceedings in the Constitutional Court.

5. The rights and freedoms of foreigners in Spain were duly protected and a series of legal guarantees were provided to that end. In addition to the provisions of article 24 of the Constitution, article 22 of the new Act on the rights and freedoms of foreigners in Spain stipulated that in the event of any discriminatory practice which infringed the rights and fundamental freedoms of a foreigner judicial protection could be extended in the ordinary courts or, where appropriate, through the remedy of amparo in the Constitutional Court.

6. Act No. 4/2000 also provided for the protection of the right to appeal against administrative acts and the right to legal assistance free of charge. Under the Act, administrative decisions taken with respect to foreigners were open to appeal (art. 19), and foreigners were also entitled to request the repeal of administrative provisions which were not in conformity with the law as well as to seek compensation for damages incurred and to lodge appeals against the State for failure to comply with its obligations. Article 20 of the Act stipulated that foreigners were entitled to the assistance of a court-appointed lawyer in administrative and judicial proceedings in connection with refusal of entry into, expulsion or forced departure from Spanish territory as well as in matters of asylum. They also had the right to the assistance of an interpreter if they did not understand or speak the official language. Moreover, foreigners who were resident or registered who did not have sufficient resources to bring a case to court were entitled to legal aid under the same conditions as Spaniards.

7. With regard to legal action taken against acts of violence with racist or xenophobic connotations or incitement to violence on those grounds, it was worth noting that, although the majority had been registered as assault cases some had been registered as offences classified in the Criminal Code as acts of racial discrimination. They included genocide, provocation of discrimination, acts with racist motives as an aggravating circumstance and refusal to provide a service on grounds of race. Further details were provided in an annex to the report (CERD/C/338/Add.6).

8. Although progress had been made in recent years with respect to the legal protection of foreigners, especially immigrants, it was recognized that a considerable effort would have to be made in future to ensure that such protection was guaranteed on a day-to-day basis in all walks of life. Following the recent events in El Ejido (Almería) numerous cases of threats, constraint and assault had been brought before the local court. Legal action had also been taken in Torres Pacheco and Cartagena for fraud and infringement of labour rights by Moroccan nationals who had paid large sums of money in order to be included in the annual quotas of foreigners with regular work permits.

9. Mr. GOMEZ-LOBO (Spain), providing further information on the legal protection of the rights and freedoms of foreigners, referred to the influx of immigrants to Spain in recent years. In 1998 the total number of foreigners in the country with a valid residence permit had stood at 719,647, an 18 per cent increase over 1997, which had prompted measures to ensure the full social integration of such persons.

10. The Plan for the Social Integration of Immigrants was designed to guarantee a stable social and legal situation for them and to eliminate any form of discrimination. Section 1 of Act No. 4/2000 covered the rights and freedoms of foreigners in Spain, family reunion, legal guarantees and measures against discrimination, while Royal Decree No. 239/2000 laid down the procedures to be followed by foreigners for obtaining residence permits.

11. Under Act No. 4/2000 foreigners enjoyed the same rights and freedoms as those of Spaniards laid down in section I of the Constitution, the only exception being with regard to certain voting rights. The principle of equal treatment was underscored in articles 21 and 22 of the Act which referred to measures to combat discrimination on the grounds of race, colour, descent, national or ethnic origin or religious beliefs and practices. Article 21 reflected the concept of racial discrimination in the same terms as were enshrined in article 1.1 of the Convention. Act No. 4/2000 also provided for the possibility of summary proceedings under article 53.2 of the Constitution as a legal guarantee in that connection. Under article 50 of Act, No. 4/2000, discriminatory acts were qualified as very serious offences and were liable to high fines. The interpretation of the basic rights of foreigners was in line with that of the Universal Declaration of Human Rights and international treaties and agreements ratified by Spain. The Act also provided for the Standing Forum on Immigration on which immigrants and their support associations, members of the civil service, trade unions and employers' organizations were represented.

12. Among the specific rights accorded to foreigners were the right and obligation to keep identity documents, the right to vote in municipal elections, the right to freedom of assembly and freedom of association, the right to work in the civil service and the right to form trade unions and to strike. All foreigners had access to basic and compulsory education free of charge and to other forms of education, and also to basic social welfare services. Health care was provided for all registered foreigners and to all minors, pregnant women and persons in need of emergency treatment irrespective of their legal status. Assistance with respect to housing was available to those foreigners who were resident or registered. The right to family reunion was also guaranteed to relatives other than the spouse on humanitarian grounds.

13. Accompanying legal guarantees included effective legal protection, the right to be represented by legally recognized associations in administrative proceedings, the right to a court-appointed lawyer and interpreter and the right to free legal aid. The classification of a number of discriminatory acts as punishable offences allowed for access to summary proceedings in conformity with article 53.2 of the Constitution.

14. With regard to social policies and programmes, he said that the Institute of Migration and Social Services (IMSERSO) attached to the Ministry of Labour and Social Affairs was responsible for the social integration of immigrants, refugees and displaced persons and for assisting asylum-seekers. Its activities included the compilation and publication of official statistics on immigrants and asylum-seekers. According to its statistics, as at December 1998 Europeans made up the largest group of immigrants (46 per cent) followed by Africans (25 per cent), Latin Americans (19 per cent) and Asians (8.5 per cent). Almost 80 per cent of the total foreign population was of an age to work and 41 per cent of the total was concentrated in Madrid and Barcelona. IMSERSO's quarterly report containing statistics on immigrants and asylum-seekers, would be made available to the Committee, as would information on State

subsidies granted to numerous non-governmental organizations (NGOs) and public bodies in recent years for aid programmes intended for immigrants and refugees. A monitoring centre had been set up in IMSERSO to study xenophobia and racial discrimination against the immigrant population. It would prepare the RAXEN (European Racism and Xenophobia Information Network) report, monitor the situation of the press and media with regard to xenophobia and racism and publish the results of annual surveys of the general public's attitude to immigration. Aside from specialist publications, the monitoring centre had also launched an important multilingual information campaign to assist immigrants in registering with their local authorities.

15. Special programmes were aimed at immigrants from Sub-Saharan Africa and the Maghreb countries in the frontier towns of Ceuta and Melilla. A number of special reports on the situation of immigrants in those towns had been annexed to the report. The number of immigrants to Melilla - currently some 200, from Algeria, Iraq and Sub-Saharan Africa - had increased by 7 per cent since 1998. They were housed in a recently established facility (CETI) providing them with temporary shelter and training, the "La Granja" settlement having been dismantled in October 1999 following disturbances there. A budget of 1,000 million pesetas had been allocated for the CETI reception centre in Melilla and a similar centre would shortly be inaugurated in Ceuta, where the number of immigrants, chiefly from Nigeria, had risen from 1,184 in 1998 to 7,784 in 1999.

16. Another noteworthy recent development in the light of the outbreak of racist violence against Moroccan immigrants in the town of El Ejido was the establishment of a special commission to implement the relevant agreement reached between employers' associations, trade unions and representatives of the Moroccan workers. Urgent measures under the agreement which had been adopted in the previous three weeks included providing accommodation for immigrants whose homes had been damaged, immediate compensation for all damages caused during the disturbances and registration of immigrants without valid identity documents. IMSERSO was cooperating with the State and regional authorities with a view to drawing up an action plan focusing on emergency housing, an employment plan, temporary accommodation and the improvement of council housing in the Autonomous Community of Andalusia. Spain's new role as a host country for immigrants had called for a change in attitudes on the part of Spanish society, which was generally in favour of the social integration of immigrants, condemning discriminatory acts that had taken place and demanding the adoption of appropriate preventive and remedial measures.

17. The rapid pace of change, the high level of illiteracy and lack of schooling had left many Spanish Gypsies marginalized. While precise data on the number of Gypsies in Spain could not be collected directly owing to the constitutional right of privacy, the community's population had been estimated at between 600,000 and 650,000, with some much better integrated than others. The most marginalized groups had high birth rates and low life expectancy, dropped out of school and lacked vocational training more often than the rest of the population, and tended to live in poor conditions. A Gypsy Development Plan had been established with a view to improving their situation. Under the plan, the Ministry of Labour and Social Affairs carried out activities to enhance inter-institutional cooperation, provide financial and technical assistance to NGOs working with disadvantaged Gypsies, enhance the image and dissemination of Gypsy culture and combat discrimination against members of the community. Since the submission of Spain's periodic report, a Sub-Commission for the Study of the Problems of the Gypsy

Community had been set up by the parliamentary Commission on Social and Employment Policy, and in December it had issued a document outlining the most serious problems facing Gypsies in Spain. On 4 March 1999, the Defenders of the People of Spain and of eight Autonomous Communities had issued a public declaration in support of the rights of the Gypsies. In addition, two directives and a plan of action to combat discrimination and foster equality of treatment had recently been proposed by the European Commission and were under discussion, and a Gypsy Education Group had been established within the Ministry of Labour and Social Affairs.

18. The Ministry of Education and Culture had a special programme for inter-cultural and remedial education for disadvantaged groups, which was aimed at improving their chances of integration. The Ministry supported mobile educational support units which provided education to circus families, as well as special programmes for children of migrant workers and for the maintenance of the language and culture of minority and immigrant groups. The Government subsidized non-profit organizations active in remedial education and took part in the European Socrates-Comenius-Action 2 programme. While most Gypsy children were now enrolled in schools, there were high drop-out and absenteeism rates and few went beyond the mandatory secondary level. As to immigrants and refugees, the enormous variety of cultures complicated efforts to develop specific programmes.

19. Mr. PÉREZ MEDINA (Spain) described the situation of languages in Spain. The 1978 Constitution recognized a joint official status regime for Galician, Basque, Catalan and Valencian in the territories where they were spoken. Some 41 per cent of the population currently lived in such territories. The proportion of people who understood the local language in the Autonomous Communities ranged from 22.7 per cent in Navarra and 43.2 per cent in the Basque Country, to as much as 97.3 per cent in Catalonia and 98 per cent in Galicia. The six Autonomous Communities concerned had adopted their respective language laws and policies between 1982 and 1986, and Spanish case law had generally been favourable to the local legislation. The adoption of a new law in 1998 by the Catalan Government aimed at intensifying the use of Catalan, had been challenged by Castilian speakers in Catalonia, but both the Spanish Government and the Office of the Defender of the People, an independent body, had concluded that the Catalan law was in keeping with the Constitution. The regional Government had, since its adoption, applied the law with great care and had made efforts to conclude agreements with the various sectors that would be affected, including multinational enterprises. In 1999, just 20 complaints had been lodged with the Defender of the People relating to language policy in Catalonia. A total of nine had been filed in four other Autonomous Communities with regional languages.

20. A clear majority of the population accepted the existing language policy. A 1998 survey, at the disposal of the Committee, bore out that assertion. In any event, that policy, which encouraged immersion and the use of local languages alongside Castilian Spanish, was preferable to a system whereby the local and national languages were separated, which would for instance require the creation of two distinct education systems. Such an option could lead to the establishment of two separate communities, which would only exacerbate the risk of conflict.

21. Mr. RECHETOV (Country Rapporteur) welcomed the fact that the Spanish delegation represented a broad spectrum of Government agencies, including the police. The comprehensive

information given in the introductory presentation on social questions, such as the situation of foreigners, immigrants and Gypsies might usefully have been included in the written report, which was unfortunately rather brief. In its concluding observations in 1996 (CERD/C/304/Add.8), the Committee had in 1996 requested that Spain's next report should be comprehensive and up to date, and provide complete information on the ethnic composition of the population and the socio-economic characteristics of each group. Much of the relevant information was contained not in the report but in the appendices, which were too voluminous to have been forwarded to the experts prior to the session, let alone translated, which made consideration of the report somewhat problematic, particularly as some of the references to the appendices misdirected the reader.

22. In its previous concluding observations the Committee had expressed concern about the increasing manifestation of racism, xenophobia and discrimination against foreigners. The fifteenth periodic report stated that the legislative groundwork had been laid for the prosecution of offences involving racial discrimination, but that it had not curbed the phenomenon of xenophobia and racism against foreigners, which was attributable to the activities of skinheads and to social or labour-related problems. It also referred to the difficulty involved in detecting racial discrimination, as many of the offences in question were reported simply as assault. As a result, only six discrimination cases had been filed in four high courts.

23. In its previous concluding observations the Committee had also regretted the lack of precise information on the socio-economic situation of Gypsies and on the exact status of the Muslim population of Ceuta and Melilla. The appendices to the report currently under consideration provided some information, and even some research results. Yet a question of concern to the Committee remained. Was it true that Spanish residents of Ceuta and Melilla held identity cards which were different from those of other Spanish citizens, and that the reason was because their ancestors had been of foreign descent? The Committee had also expressed concern about the lack of information on the training of members of the security forces, the judiciary and the public service in the avoidance of racial discrimination. While the report addressed that issue, it did not give an indication that there was an extensive programme to involve the security forces in such work.

24. The oral presentation and the report had shed much light on the complex problem of language policy, which was not unique to Spain. The Russian Federation, too, had certain republics which gave pride of place to the local language, thus placing the Russian language in a secondary position. A number of NGOs had informed the Committee that the decisions taken by the Spanish authorities led to discrimination against the Castilian-speaking population of Catalonia and fostered an attitude of nationalism among Catalans. The NGOs asked about guarantees for the rights of Castilian-speakers, including the right to attend school in their native language, requested information on the financing of Castilian and Catalan language teaching, and asked why certain information was disseminated only in Catalan. While acknowledging the complexity of the language issue, he said that it was in the interests of the country to ensure that such questions did not become subjects of antagonism between national groups.

25. The report stated that Spanish legislation had provisions which prohibited neo-Nazi or racist organizations and provided for their dissolution, but it also reported that no organizations

or associations had been the subject of such measures. That would indicate either that they did not exist or that the regulations in question were not effective, perhaps because they were not applied properly.

26. The social and economic situation of foreigners was a subject of concern not only to NGOs, but also to the International Labour Office, which had issued a report on the matter. On the situation of Moroccan applicants for employment, it had found that in 116 of 269 cases there had clearly been unequal treatment. The fifteenth periodic report gave little information on compensation provided to victims of discrimination and, although the subject had been taken up during the oral presentation, further information would certainly be of interest to the Committee.

27. In the light of the situation of Gypsies in Spain, it would perhaps be of interest to the Spanish delegation and Government to note that the Committee was planning to hold a special session in August 2000 on the situation of Roma in Europe. Increasing attention was being paid at the international level to the plight of Roma people throughout the world, in part thanks to the Committee's work.

28. Spain had made the declaration under article 14 of the Convention allowing for individual complaints to be lodged with the Committee, but had attached the condition that such communications could be sent only after the exhaustion of domestic remedies and within a period of three months. Since the Convention stipulated that the petitioner should have up to six months to lodge the complaint, the Spanish declaration was inadequate. It should be made clear to the Government that it had not fulfilled the requirements of article 14.

29. In its concluding observations issued in 1996 the Committee on Economic, Social and Cultural Rights had noted with great concern acts of discrimination and racism against foreigners in Spain, and particularly against North Africans, asylum-seekers, illegal workers and Gypsies. In 1997 the Committee against Torture had stated in its concluding observations that it had received information concerning many cases of ill-treatment which appeared to constitute manifestations of racial discrimination. The European Commission against Racism and Intolerance (ECRI), and some Jewish organizations such as the American Jewish Committee, had noted that anti-Semitism did not yet seem to be entirely eradicated from Spanish society. Amnesty International had drawn attention to alleged cases of torture of members of Euzkadi ta Askatasuna (ETA) by the police during pre-trial detention and inhuman and even criminal treatment of some Moroccan prisoners. The Government of Spain should continue working to eliminate such examples of discrimination.

30. He thanked the delegation for its continuing dialogue with the Committee. The country was undergoing major changes as it attempted to overcome obstacles remaining from its past. On the whole the new developments were positive and the Committee's questions and recommendations were simply aimed at further developing its dialogue with the State party in the interest of the rule of law and the successful implementation of the Convention.

31. Mr. FALL, Vice-Chairman, took the Chair.

32. Mr. VALENCIA RODRIGUEZ, commending the report as a positive contribution to Spain's dialogue with the Committee, noted that reform of the Criminal Code and the work of

the Defender of the People had led to a decrease in xenophobia although the number of offences involving racial discrimination had not dropped significantly. Racism was reported to be occasional rather than organized in nature and could usually be attributed to far-right movements. That situation was further aggravated by labour market problems related to immigration and Gypsies. The latter were of special concern, and the measures described in paragraph 47 must be further developed.

33. New measures had been implemented pursuant to Act No. 4/2000 to deal with the problems related to the large numbers of legal and illegal immigrants. There had been reports of ill-treatment of immigrants who were blamed for taking jobs from Spanish citizens even though they usually accepted jobs which Spanish citizens did not want. The new measures should reconcile both the principles of national sovereignty and the human rights of new arrivals. The Committee should be kept informed of progress made in that area, and he urged the Government to make use of information provided by Spanish NGOs and to take their recommendations into account.

34. With regard to the implementation of article 2 of the Convention, he stressed the importance of the establishment of the European Monitoring Centre on Racism and Xenophobia and the activities organized during the European Year against Racism in 1997, and of the establishment of the Spanish Committee in that connection, and hoped that the Committee would be kept informed of the results of those activities.

35. With regard to article 3, the State party had taken due note of the Committee's interest in possible practices of racial segregation, especially in large cities, where economic segregation was directly related to racial or ethnic considerations.

36. With regard to the implementation of article 4 of the Convention, he noted that a racist organization could only be dissolved by the courts, not by the administration. A legally constituted association might change its objectives and begin to promote racial discrimination, and he wondered whether a private citizen would have to initiate proceedings before the courts or the Office of the Defender of the People or whether the authorities could act on their own initiative, and whether any measures had been taken to deal with the neo-Nazi groups mentioned in paragraph 45.

37. With regard to article 6 of the Convention, Spanish law stipulated that Spanish citizens and foreigners were equal before the law with respect to the rights governed by the Convention. When cases of racial discrimination did occur, however, they tended to be dealt with as cases of assault. He wondered whether that was because judges and lawyers were reluctant to recognize the racial or ethnic basis for those acts and whether they might not even be aware of the provisions of the Convention. Following the previous report of Spain, the Committee had expressed concern about continued mistreatment of foreigners by the police and he reiterated the Committee's expectation that the Defender of the People would be able to improve that situation.

38. With regard to article 7 of the Convention, a welcome development had been the holding of the European Seminar in Madrid in March 1998. The Seminar's recommendations and the Madrid Declaration had been sent to the European Commission and those activities should have a positive influence on the Government's efforts to eliminate all forms of racial discrimination.

39. He expressed satisfaction that Spain had withdrawn its reservation relating to article 22 and had made its declaration under article 14 of the Convention, but noted that it required communications to be made within three months of exhausting all domestic remedies, rather than six months as stipulated in the Convention.

40. Finally, in the area of language rights, he noted the decision of the Constitutional Court (para. 62) requiring the Autonomous Communities to ensure knowledge of both the local language and Spanish and guaranteeing full equality in the area of linguistic rights and duties. However, the Association for Tolerance, an NGO based in Barcelona maintained that language policy in Catalonia favoured Catalan to the point that Catalan was considered by the administration to be the only, or at least the preferred language. He agreed with that Association that the Spanish Government should take steps to ensure that the protection of minority languages did not lead to policies and practices which limited the rights of citizens who spoke the national language. The Association had also indicated that as a result of that situation, there had been outbreaks of ethnic xenophobia to prevent those who did not consider themselves to be Catalan nationalists from exercising their right to freedom of expression and association.

41. Mrs. ZOU Deci said that the size of the Spanish delegation testified to the importance the Government attached to the work of the Committee. She was, however, disappointed that, despite the fact that following the previous report the Committee had requested much more specific information on the socio-economic situation of the Gypsy community in the areas of, for example, housing, education and employment, the current report contained only one paragraph (para. 56), on that topic, which simply referred the reader to an annex. The annexes had only been available to members after their arrival in Geneva and then only in Spanish. In future any issues arising out of the concluding observations of the Committee should be more fully developed in the report and be available in the Committee's four working languages.

42. The delegation's oral presentation had dealt with the Gypsies but was still unsatisfactory. No statistics were said to be available on the ethnic breakdown of Spanish society because the Constitution protected privacy of identity. She wondered whether Gypsies hesitated to disclose their ethnic origin for fear of discrimination. The Gypsy population tended to be concentrated in several major cities and Gypsy children tended to have a high school drop-out rate. She could not credit the view that it was because Gypsy children did not like school that they left school early. As a result of their low educational level Gypsy children did not have the same opportunities as other Spanish children and subsequently had problems finding employment. The World Directory of Minorities had reported in 1997 that half of all Gypsies did not have proper employment and those that did have jobs often worked below the minimum wage, 7.5 per cent were illiterate, infant mortality rates were 11 per 1,000, life expectancy was lower than other Spaniards, only 5 per cent could expect to live past the age of 55, and Gypsies often lacked adequate housing.

43. If the Spanish Government committed itself to studying and resolving the Gypsy problem, it could succeed. She hoped that, in the future, the Spanish Government would pay more heed to the Committee's concluding observations and provide more complete information on the socio-economic situation of the Gypsy people.

44. Mr. DIACONU said that, coming from a country with a large Roma minority, he was very interested in the Gypsy situation in Spain and asked whether the development plan for the Roma people in Spain, begun in 1988, had been successful. He wondered whether such plans in general were useful or needed to be modified and whether the Gypsies of Spain tended to emigrate towards other European countries, such as Central Europe, or whether immigration tended to be from Central Europe to Spain. He would also be interested to know how many Roma requested political asylum.

45. Although the report (para. 5) noted an increase in violence by youth, including violence against foreigners by extremist groups, the numbers of race-related complaints had declined, which seemed paradoxical. Such crimes tended to be classified as cases of assault rather than racist crimes (para. 40). The police and other authorities must be trained to recognize racism and discrimination as defined by the Convention and must mention it in any charges laid, in order to ensure effective implementation of the Convention.

46. With reference to paragraph 45, he had the impression that the Defender of the People was in fact rather powerless and inquired what role he played in drawing the attention of the police and prosecutors to racist or discriminatory incidents.

47. He shared Mr. Rechetov's concerns about the legal status of residents of Ceuta and Melilla. He, too, acknowledged the seriousness of the problem of language rights. In that context, he asked, for example, how education rights were guaranteed for both the Basque and Spanish languages, whether there were separate schools for the two linguistic groups or whether each group was expected to learn both languages.

48. Mr. Sherifis, Chairman, resumed the Chair.

49. Mr. de GOUTTES said that the report contained a number of positive elements. New measures had improved the situation of immigrants, including illegal immigrants. Temporary permits would be granted after two years' residency and immigrants and their children had the right to schooling and to social benefits. He wondered whether, like other countries, the Government intended to regularize the situation of illegal residents and what impact the very recent elections would have on that situation. The Government had made its declaration under article 14 of the Convention and had expressed its commitment to the provisions of article 25 of the European Convention on Human Rights. He wished to know, however, why the Spanish declaration under article 14 required that communications should be filed within three months after the exhaustion of local remedies, rather than six months as provided for by the Convention.

50. Paragraphs 15, 27 and 28 of the report described changes to the Criminal Code which seemed to satisfy the requirements of article 4, although the question of the implementation and application of those changes remained. Efforts described to improve human rights awareness and tolerance amongst the police and the Civil Guard were commendable, although the report was also very frank in recognizing (para. 55) that the security forces still did not always behave correctly towards foreigners.

51. He was somewhat surprised that Spain's fifteenth periodic report had not placed more emphasis on the Europeanization of the fight against racial discrimination, a development which could be seen in the Treaty of Amsterdam (art. 13) and also in a draft programme of action and two draft directives to that effect proposed by the European Union.

52. Paragraph 6, which stated that the words "racist" and "xenophobic" were losing their force, suggested that there had been a trivialization of the phenomenon of racism. That was a worrisome development. Yet according to paragraph 9, racism and xenophobia had two main sources: the skinhead movement, and social and labour-related problems. Was such a statement not inconsistent with the aforementioned assertion in paragraph 6?

53. With regard to the information provided on the functioning of the Criminal Code, the Committee still needed to know more about how effectively the Code was implemented. For example, no specific case had been cited in which a racist organization had been punished or abolished, notwithstanding the report's recognition of the existence of such organizations. Had any measures been taken against them?

54. According to paragraph 41, the persons arrested in connection with the events in El Ejido had been charged not with racial discrimination, but with assault, unlawful detention and illegal entry. That was regrettable because, pursuant to section 22 of the Criminal Code, racist intent constituted an aggravating circumstance. Was section 22 properly applied? Would it not be useful to issue instructions to the prosecuting authorities to take racist intent into account in cases of violence or assault? What was the nature of the charges lodged after the more recent, much more serious, events that had occurred in El Ejido in February?

55. Paragraph 65 stated that Act No. 1/98 of 7 January 1998 bordered on unconstitutionality, but that, following talks with the Generalitat de Cataluña, it had been decided not to file an action for unconstitutionality in the Constitutional Court. Was that decision in keeping with legal and constitutional criteria, or had it been taken for political considerations and out of a desire to maintain law and order in the region? According to section 3 of that Act, Catalan and Spanish were the official languages of Catalonia. Did that fully meet the recommendation made by the Committee in its concluding observations on Spain's thirteenth periodic report calling for the authorities to take measures to ensure that Castilian-speaking children had the possibility of receiving education in Castilian in Catalonia? A report sent to the Committee by the NGO *Organización por la tolerancia* had referred to difficulties in that regard. Did the delegation have any additional information on the subject?

56. Ms. McDOUGALL said with reference to the Roma population that she had come across a number of alarming statistics: only 35 per cent of Roma children were enrolled in school, 60 per cent did not complete primary school and very few finished secondary school; more than 80 per cent of parents were functionally illiterate. The Spanish NGO Gypsy Presence found that one fifth of teachers described themselves as anti-Roma, and one quarter of pupils said that they would like to see the Roma expelled from the schools. Although paragraphs 47 to 49 showed that some initiatives had been taken to educate pupils and teachers about those issues, she would like to have additional information on other programmes.

57. A city ordinance prohibiting peddling had apparently been overturned, but it was still sometimes enforced, and other municipalities had introduced similar laws, all to the detriment of the Roma. How was the State party dealing with that matter? What programmes in the formal employment sector addressed issues of discrimination? Roma women in particular were said to have difficulty finding work because of the stereotype of their having a very high birth rate; that was the reason given by some employers for refusing to hire Gypsy women.

58. Mr. LECHUGA HEVIA pointed out that, in its concluding observations on Spain's previous periodic report, the Committee had noted that acts of racial discrimination constituted an impediment to the full implementation of the Convention. Although efforts had been made to combat such acts in a number of areas, the situation had not changed very much, judging by what could be read every day in the press on racist incidents throughout the country. According to a recent ILO report, 36 per cent of foreign workers residing legally in Spain had been denied employment by firms because of their origin and 25 per cent of Moroccans had not even been permitted to apply formally for employment.

59. Paragraph 5 stated that statistics for 1997 concerning acts reported to the police indicated a decrease in racist and xenophobic activity in comparison to 1996. Could the delegation provide more recent information?

60. The numerous incidents in which Gypsies had been the victims of racial discrimination showed that many provisions of the Convention were not implemented in their regard. The Spanish delegation had said that a study was to be conducted on Gypsies; should it not have been carried out much earlier? Was it a new study or a continuation of an earlier one?

61. He referred to the dissemination of racist messages by neo-Nazi groups in rock music on CDs, which were readily available in the marketplace or on the Internet. Allowing such propaganda was a violation of article 4 (a) of the Convention. Could the delegation comment on that subject? Was such propaganda not prohibited in the Criminal Code?

62. He asked about detention centres for foreigners who had entered the country illegally. According to the Madrid Bar, such centres did not provide full legal guarantees. The Defender of the People had denounced police ill-treatment in those facilities. Could the delegation explain what measures had been taken to improve the situation there?

63. Discrimination was also reported in the housing sector. According to the National Union of Workers, landlords were reluctant to rent to foreigners from developing countries, even when such persons could show that they were employed. It appeared that Gypsies and Moroccans were the groups hardest hit by such discrimination.

64. Mr. PILLAI asked whether the decrease in racist and xenophobic activities referred to in paragraph 5 was in part due to a decline in the social or labour-related problems cited in paragraph 9.

65. Turning to paragraphs 29 and 30, he asked what consequences removal from the Associations Register on grounds of activities with racist connotations would have for an association. Would it no longer benefit from state support? Would such removal serve as an example to other organizations with similar goals?

66. With reference to paragraphs 42 and 43 in particular, it would have been helpful if a summary of the information contained in the many annexes had been provided in the appropriate paragraph of the report. On paragraph 43, it would be useful to have a study of cases in which racial discrimination was the underlying motive.

67. Mr. NOBEL asked the delegation to comment on the World Directory of Minorities' estimate that there were between 170,000 and 260,000 undocumented migrants in Spain, or as many as half the total of legally resident foreigners.

68. Spanish citizenship was granted only by birth to children of Spanish-born parents, and that resulted in large numbers of children being deprived of their legal rights. It was to be hoped that those children would also benefit from the new legislation referred to earlier.

69. According to the World Directory of Minorities, police violence against members of new minorities as well as Roma/Gypsies was widely documented. Not only was the behaviour of the authorities of direct importance for preventing such groups from becoming the victims of police violence, but it also set a dangerous example. When the police beat up members of minorities with impunity, it encouraged skinheads to follow suit.

70. He was concerned about the creation of a "Fortress Europe" through a harmonization of immigration policy within the European Union which involved moving immigration controls to the outer Union borders. The emerging notion of an area within which there was freedom of movement for all European Union citizens while persons from other countries were undesirable contained the germ of racism. Such immigration legislation easily led to racist practices in their implementation.

71. Did Spain impose sanctions on airlines which transported foreigners to Spain without first checking their documents? If so, did the delegation find it appropriate that the responsibility of Governments set out under the 1951 Geneva Convention relating to the Status of Refugees for determining whether an asylum-seeker was a bona fide refugee was delegated to airline staff?

72. Mr. FALL said that the recent events in Andalusia were clearly acts of xenophobia directed against all Moroccans. What measures was the Spanish Government taking to combat such acts of racial discrimination as provided for under section 510 of the Criminal Code?

73. Mr. BRYDE said that, like Mr. de Gouttes, he was anxious to see whether the legislation passed in February to improve and in certain cases legalize the situation of immigrants would survive the previous Sunday's elections, since it had been passed despite opposition by the Government, which now had a majority to change it.

74. He had read an interview in the 11 March edition of the newspaper Le Monde with the president of an association of Moroccan workers who had been warning for years about the

explosive situation in El Ejido, where large numbers of agricultural workers lived in very poor, insalubrious conditions, segregated from the local population and subject to abuse by employers. In the interview, it was maintained that similar situations existed elsewhere in Spain. What was planned to avoid a repetition of the El Ejido events, not only by improving police action, but also by rectifying the social conditions?

75. Mr. YUTZIS said that paragraph 7 referred to the as yet more occasional than organized nature of racism in Spain but considered that, when such manifestations took place repeatedly, they ceased to be merely occasional and gave great cause for concern.

76. The comparative ILO report referred to earlier had found that in many cases foreigners were refused employment not because they lacked the skills, but for xenophobic reasons. What preventive measures were being taken, and what was being done to address not only the legal, but also the social aspect of the problem?

The meeting rose at 6.05 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1384th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 March 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fourteenth and fifteenth periodic reports of Spain (CERD/C/338/Add.6; HRI/CORE/1/Add.2/Rev.2) (continued)

1. At the invitation of the Chairman, the members of the Spanish delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the delegation to respond to questions asked by members of the Committee at the previous meeting.

3. Mr. PEREZ-HERNÁNDEZ Y TORRA (Spain) said that his delegation was submitting to the Committee a large number of documents in Spanish and other official languages of the United Nations (report on racism, xenophobia and intolerance in Spain; police bulletin on services for foreigners; guide for immigrants; report on municipal services; list of services for the Gypsy population; surveys by the Ministry of Labour and Social Affairs on immigration in Spain and Europe; development plan for the Roma people; immigration indicators for Spain; document on migration and racism; etc.). The quantity of documents demonstrated Spain's deep desire to give the Committee the fullest possible information on its implementation of the Convention

4. Ms. VEVIA ROMERO (Spain) answered a number of questions asked by members of the Committee. On the question of why, in its declaration under article 14 of the Convention, Spain had indicated that it authorized petitioners to transmit communications to the Committee within three months instead of the six months provided for under article 14, paragraph 5, she explained that since there was no Spanish body competent to receive and consider petitions from individuals or groups of individuals who had exhausted local remedies, Spain had deemed it appropriate to enable petitioners to submit communications to the Committee within a period of three months. The purpose of that measure was to do away with legal uncertainty and achieve the desirable level of efficacy. Spain was nevertheless prepared to consider the matter further, together with the Committee, and to take account of any comments it might wish to make.

5. One member of the Committee had mentioned a decision by a higher court that overturned a city ordinance prohibiting the activities of travelling pedlars in which the higher court had found that the ordinance constituted an act of discrimination against Spanish Gypsies. The delegation had no additional information but did wish to point out that the activities of travelling pedlars fell under the exclusive competence of the municipal authorities which, for fiscal, commercial or health reasons, could adopt ordinances applying to everyone, without regard for ethnic group or origin. She did not think that the prohibition of peddling could on the whole be said to constitute discrimination against the Gypsy community, which was subject to the same laws as other groups within the Spanish population.

6. With regard to another question, she referred to two court rulings. In one, the Supreme Court in October 1998 had annulled a sentence of two years' imprisonment imposed by the

competent provincial organ in 1993 on three policemen who had seriously wounded Peruvian nationals. The other had been adopted by the prosecutor's office of Madrid, which had recommended sentences of three to seven years' disciplinary lay-off for nine officers from a Madrid police station who had illegally arrested Hungarian immigrants. An appeal was under way.

7. Concerning shopkeepers who refused to provide services on racial grounds, she indicated that in 1998, the Supreme Court had suspended for one year the licence of an automobile vendor in Murcia province who had refused to deal with a black client. A penalty had thus been imposed for an act based on racial discrimination.

8. Mr. ALBALADEJO CAMPOS (Spain) said that in order to explain the apparent contradictions mentioned by many members of the Committee between the alleged drop in racist incidents and the proliferation of acts of violence by groups of young people motivated by racist and xenophobic ideology, he would provide recent police statistics updating for the period 1998-1999 the information set out in the periodic report. In 1998, 58 cases had been recorded compared with 94 in 1994, a reduction which could not yet be interpreted as a clear trend.

9. Legal statistics showed that increased attention was being paid to offences of a racist or xenophobic nature by the Office of the Public Prosecutor, which had recorded 22 racist offences, a figure that reflected the positive impact of the new Criminal Code and showed that greater efforts were being made to bring to justice the perpetrators of offences motivated by racism, racial discrimination, xenophobia or intolerance.

10. Units trained to investigate the activities of groups with a racist or xenophobic ideology had been set up in the security forces of central State administrations and the major provincial capitals. Their work had enabled the Directorate-General of Police to create files on the activities and identity of those clandestine groups. The special units also monitored the dissemination of racist propaganda over the Internet, and the Office of the Public Prosecutor and the courts had the duty automatically to take action when they were informed of offences of that nature.

11. Existing administrative provisions on registration of associations precluded racist or xenophobic associations, which by definition pursued illegal objectives, from being registered. Organizations already registered which adopted racist objectives and undertook racist activities had to be disbanded. No instance of that kind had occurred in recent years, however.

12. Turning to compensation paid to the victims of violence in El Ejido, he said the State had set up an emergency indemnification system on the basis of an 85-million peseta fund: 84 of the 200 victims had already benefited in the amount of 26 million pesetas.

13. With regard to the Melilla affair when Muslims had been attacked by a group of legionnaires, an accelerated procedure had resulted in the persons accused being sentenced to prison terms and payment of damages.

14. Regarding the training given to national security forces in the context of human rights and the struggle against racist and xenophobic phenomena, he referred the Committee to a document circulated during the meeting which updated the information on that subject in Spain's periodic report and which was specifically based on the Council of Europe statement on the police and the United Nations Code of Conduct for Law Enforcement Officials. The Directorate General of Police had established a service for foreigners and its members received special training.

15. The detention centres for foreigners, whose procedures were governed not by separate provisions but by analogous interpretation of Spanish law, had been the subject of a ministerial order in 1998 setting out the rights of detainees and specifying that the centres functioned in conformity with recommendations formulated by the Ombudsman.

16. Mr. HERNÁNDEZ JIMENEZ (Spain) answered the questions asked by members of the Committee on the situation of the Gypsies in Spain.

17. Concerning the number of Gypsies in the country, he explained that the Spanish Government did not collect statistics on the ethnic composition of the population, but studies regularly carried out for practical purposes by regional bodies, non-governmental organizations (NGOs) and experts provided a certain amount of detailed information. For example, they revealed that the Gypsy population was gradually increasing, partly because of the influx into Spain of Gypsies from European countries such as Bulgaria, Romania and Portugal. They also indicated that a large percentage of Gypsies were disadvantaged in terms of exercise of the rights that they enjoyed as citizens in the fields of education, security, access to employment and lodging.

18. To resolve that problem, the Spanish authorities were carrying out a number of measures under the development plan for the Roma people in Spain, adopted in 1985, in which administrative bodies at the national, Autonomous Community and local levels as well as members of representative Gypsy associations were participating and which was being coordinated by the Ministry of Labour and Social Affairs. The plan comprised integrated social action programmes to combat marginalization and to further the social and cultural advancement of the Gypsies, programmes which had cost the equivalent of US$ 56 million for the period 1998-1999; mechanisms for collaboration with NGOs, including in the implementation of social integration projects in the fields of labour and education and for the promotion of women; plans for the training of professionals working in social and educational programmes to benefit the Gypsy communities; and information campaigns and training activities designed to raise awareness of Gypsy culture in Spain and thereby to promote solidarity and multicultural cohesion.

19. The plan had achieved good results, including full schooling of Gypsy children and a reduction in the rates of school absenteeism, dropping-out and failure; the training of Gypsy women in the area of health; improved access to housing; access to vocational training and study of methods to promote the integration of Gypsies in the labour market; expansion of job opportunities for Gypsies; development of the activities of associations among Gypsies; and improvement of the Gypsy people's image in society and the media through consciousness-raising efforts.

20. Measures had recently been adopted to benefit the Gypsy minority, including the establishment in October 1999 of a parliamentary subcommission responsible for studying the problems of the Gypsies and proposing new measures to benefit that group and the elaboration by a number of Autonomous Communities of programmes for the advancement of the Gypsy people (in Andalusia, Castilla and Léon, Murcia, etc.).

21. Mr. DE OSSORVO ALMECIJA (Spain), replying to questions on whether there had been any changes to legislation on immigration, said that Spanish policy in that area was founded on a political and social consensus which had served as a basis for the new implementing Act No. 4/2000 on the rights and freedoms of foreigners and their social integration. The sole purpose of that legislation was to bring domestic law into line with evolving social reality, i.e. the fact that Spain was no longer a country of transit for immigrants on their way to other countries of the European Union, but a country of destination, a circumstance which called for preventive measures against the racist and xenophobic phenomena of which immigrants were the victims. The new legislation reaffirmed and strengthened Spanish policy in that area, which traditionally fulfilled three main requirements: channelling migration movements, ensuring the social integration of foreigners and combating illegal immigration. That policy was pursued together with the other countries of the European Union and in cooperation with the immigrants' countries of origin.

22. Since 1995, a number of normalization programmes had made it possible in most cases for illegal aliens to obtain an official residence permit. Currently, Act No. 4/2000 should enable some 70,000 to 100,000 immigrants to legalize their situation.

23. Spanish law made no provision for sanctions against transport companies which brought refugees to Spanish territory, such a measure having only been contemplated during drafting of the new Act.

24. As to the situation of Muslims in the Spanish cities of Ceuta and Melilla in North Africa, which the Committee had judged alarming when it had considered Spain's previous periodic report, he said that that population had acquired Spanish citizenship through naturalization and thus enjoyed the same rights as other Spanish citizens. He assumed that the Committee's concern was directed at the situation of a small group of Moroccan citizens who, for historical reasons, had a different but very advantageous status, which most of them had since given up in favour of Spanish nationality.

25. Bilbo Etxezabal, the NGO whose report had been submitted to his delegation by a Committee member, was part of a federation of associations, the FAIN, within which it had participated during the period 1997-1998 in the activities of the Forum for the social integration of immigrants. Although Bilbo Etxezabal was no longer active in the FAIN, the Government was indirectly informed of its proposals and initiatives, of which it took note in an open-minded spirit.

26. Mr. GÓMEZ-LOBO (Spain), referring to the International Labour Organization (ILO) report cited by members of the Committee listing Spain as a country in which job-seekers were discriminated against, said that there was no question that cases of discrimination occurred, but noted that Spain was one of a number of European countries mentioned, along with Belgium, Germany, and the Netherlands. Moreover, the reliability and quality of that survey were questionable.

27. Although employers unofficially screened applicants in prior telephone interviews, turning down certain job-seekers because of their national or ethnic origin without compromising themselves by advertising for other than professional criteria, such employers could henceforth be brought to court, the Act on the rights and freedoms of foreigners in Spain, promulgated on 1 February, stipulating that any measure taken by an employer or his representatives which was prejudicial to an employee for reasons of his foreign status, race, religion or national or ethnic origin constituted a discriminatory act.

28. Replying to the question on the migratory movements of the Roma, he said that the Spanish Gypsy population had become sedentary, lived in cities and did not migrate outside Spain, but that groups of Roma from Portugal and Romania had recently immigrated to Spain to settle there and had applied for reception and welfare assistance in Madrid, Barcelona and Valencia.

29. As for discrimination in housing, he noted that, at the request of the Ombudsman, a number of local administrations had changed their policy so that non-nationals were not discriminated against in access to housing, a right set out in the above-mentioned Act. Of course, it was difficult to combat indirect discrimination for reasons other than those punishable by law.

30. Replying to Mr. Bryde, who had said that according to the president of the biggest association of Moroccan immigrants in Spain, riots similar to those which had taken place in El Ejido might occur elsewhere, he pointed out that the authorities had taken a number of measures to promote the social and cultural development of rural areas, where conflicts were most likely to recur. Those measures consisted in fostering programmes to create adequate housing, devising work programmes geared to market needs, providing for temporary housing consistent with the labour contract and starting negotiations on working conditions.

31. Well before the El Ejido events, the Ministry of Labour and Social Affairs had introduced negotiation and social mediation programmes in the province of Almeria which had not yielded results because they had not been implemented forcefully enough. Since the February riots, emergency administrative action units had been created to produce housing programmes, promote access to low-cost housing and put a labour market recovery programme into place in order to prevent a recurrence of such conflicts.

32. Mr. PÉREZ MEDINA (Spain), commenting on language policy, said in reply to a request for clarification from Mr. Diaconu that according to a survey conducted annually by the Centre for Sociological Research, 43.2 per cent of the Basque population understood Basque and 28 per cent spoke it. As only a minority spoke and understood Basque, the opposite situation of that of Catalan, the Basque educational system was very different from the Catalan

system and offered three types of classes: type A, in which all classes were in Spanish and Basque was a separate subject; type B, in which half the classes were in Basque and half in Spanish; and type C, in which all the classes were in Basque and Spanish was a separate subject. Type A was the least popular: parents were well aware that their children's employment prospects would be better if they mastered both languages.

33. Replying to the Rapporteur's question on the financing of education, he said that each Autonomous Community financed its school system through taxes levied within its confines. The central government did not have a budget for education.

34. One NGO had been cited which had reported a violent incident in Barcelona triggered by a language dispute. That case was entirely exceptional in the Spanish context. Replying to a question by Mr. Valencia Rodriguez, he said that there were no restrictions on the freedom of association or assembly of persons who espoused nationalist opinions. He agreed with Mr. Valencia Rodriguez that the Committee could not take the comments of the above-mentioned NGO at face value. Both the Catalans, who believed that the use of their language was not sufficiently safeguarded by the public authorities, and Spanish-speakers, who felt excluded by the Catalan majority, considered themselves to be discriminated against and employed the same arguments against one another.

35. The number of complaints received by the Ombudsman gave an indication of the discontent in the Catalan-speaking population. In 1998, there had been 3,323 complaints in the Catalan Autonomous Community, this high figure being due to a campaign orchestrated by an NGO. In 1999, there had been no more than 32 for all of Spain, including 20 in the Catalan Autonomous Community of 6 million persons. Since 1990, there had been only eight amparo proceedings involving language questions. Those data suggested that language discrimination was not an issue in Spanish society.

36. In reply to a question by Mr. de Gouttes regarding the constitutionality of the 1998 Catalan Language Policy Act, he said that that legislation had been the subject of protracted negotiations in the Catalan Parliament and that, once promulgated, it had been examined by the central government, which had concluded, as had the Ombudsman, that it was constitutional. It should be pointed out that that Act had been drawn up in a context of declining tensions, after decisions had been taken on 17 cases on language disputes between the central government and the Autonomous Communities and the case-law of the Constitutional Court had become more firmly established. Most schools in the Catalan Autonomous Community were taught in Catalan; that was to be welcomed, because it prevented the emergence of two separate language communities.

37. Mr. Yutzis had said that there could be a gap between the legal framework and social reality. It was a fact that the Catalan Language Policy Act was implemented very cautiously by the Catalan Autonomous Community, where bilingualism and a sense of compromise were deep-rooted, faculties which probably explained the moderation in applying that legislation and the small number of complaints.

38. Mr. BRYDE welcomed the fact that the State party had made a declaration under article 14, but requested it to reconsider its call for the time limit for submission of

communications to be reduced to three months. That time limit was too short for the petitioner, who might not learn of the existence of such a procedure until it was too late; furthermore, as the clause conflicted with rule 19 (f) of the Committee's rules of procedure concerning admissibility of communications, the Committee would be obliged to amend those rules if other States parties were to follow the example of Spain.

39. Mr. YUTZIS said that appropriate legislation was obviously an essential tool in the fight against racial discrimination. That being said, legislation was not a panacea, and there was often a discrepancy between the letter of the law and its application.

40. Reverting to the situation of Moroccan workers in Spain, he said that legislation could do nothing to prevent local communities in areas with high concentrations of immigrants from having a negative perception of them, usually based on social stereotypes that might be exacerbated by economic conditions. It was a well known fact that when the economic situation deteriorated, foreigners were the first to feel the pinch. Surveys conducted by the ILO in Málaga, Madrid and Barcelona had shown that employers, too, were influenced by stereotypes.

41. Government authorities must thus not simply be content to pass legislation: they must also take educational measures to eliminate prejudice. It must not be forgotten that minority groups who were victims of discrimination did not have the means to stand up for themselves in the media, and that it was up to the receiving country to make the necessary effort to help the local population to gain a better understanding of them, to accept their differences and to overcome widespread misconceptions concerning them.

42. Turning to specifics, he drew the Spanish delegation's attention to a presentational matter concerning the report. The fact that the report had a large number of annexes made it difficult to consult. In future, Spain should try to incorporate all the information it submitted into the report itself, so as to make Committee members' work easier.

43. Mr. ABOUL-NASR, reverting to Mr. Bryde's comment, said that Committee members obviously wished States parties to make the declaration under article 14, but that the Committee had never "unanimously requested" a State party to do so, since that would be to overstep its powers. The clause was optional and should remain so. That being said, it was strange that Spain should have made a "reservation" regarding the rules of procedure, a quite unprecedented step, particularly as the provision in question was not mandatory or binding.

44. In her reply, Ms. Vevia Romero had said that the situation of the Roma street traders was a matter for the municipalities, not for central government. That reasoning was unacceptable, as it was the Government and not the municipalities that had acceded to the Convention and was responsible for its application.

45. Mr. SHAHI said he had greatly appreciated the report of Spain and in particular the fact that it concluded with an account of the follow-up to the Committee's suggestions and recommendations. That fact deserved to be commended. However, he noted that in the recommendations it had made in 1996, following its consideration of the thirteenth periodic report of Spain, the Committee had recommended that the next report should contain detailed information on complaints and sentences relating to acts of racial or ethnic discrimination. Yet

in paragraph 42 of the report now before the Committee, Spain merely stated that six cases dealing with racial discrimination as such had come before the courts of Murcia, León, Madrid and Seville, but had provided no details of those cases.

46. Mr. de GOUTTES, endorsing Mr. Bryde's comment concerning the declaration by Spain under article 14, said it would be preferable for Spain to reconsider its declaration and not to break ranks with regard to the time limit of six months provided for in paragraph 5 of article 14.

47. As for the confrontations that had taken place in El Ejido that February, they appeared to be directly linked to the massive influx of Moroccan agricultural workers attracted by the extraordinary economic prosperity of the Almería region. Two questions arose: first, had those incidents influenced the process of regularization of immigrants; and, secondly, had criminal proceedings for racial discrimination been brought in that connection, in addition to any proceedings brought for violence and assault?

48. Ms. JANUARY-BARDILL noted that in paragraph 16 of its report Spain explained that it offered training in the principles of non-discrimination to officials in the public administration. She asked whether there were any monitoring or control mechanisms with which to verify that those officials actually applied the principles they had been taught.

49. She also asked the Spanish delegation to reply to the questions put by Mr. Nobel at the previous meeting concerning the problem of the 170,000 or so persons without documentation, and on whether the airlines that brought prospective immigrants to Spain in the full knowledge that they would have difficulty in regularizing their situation were liable to sanctions.

50. Mr. IÑIGO DE PALACIO (Spain), replying to Mr. Yutzis, said that his country had made great efforts to gather as much information as possible, which accounted for the large number of annexes to the report. However, if that format made the Committee's task more difficult, Spain would endeavour to make its future reports more succinct and easier to consult.

51. He entirely agreed with Mr. Yutzis that immigration problems were exacerbated by the prevailing economic conditions. As a result of rapid economic development, Spain, which had traditionally been a migrant-sending country, was now becoming a net recipient of migrants, and attitudes did not always keep pace with the economy.

52. Local and regional administrations were making efforts to raise public awareness of the issue, but in practice, when a foreigner and a Spaniard came to blows, it was not always easy to establish a "racist connotation", and the simplest course was to focus on the facts, rather than investigating the motive. However, the abundant case law cited in the report and its annex 8 showed that things were changing.

53. With regard to the declaration under article 14, there seemed to him to be no particular purpose or reason for the change to the time limit in paragraph 5, and his delegation would make a point of conveying the Committee's remarks on the matter to the Spanish Government.

54. Replying to Mr. Aboul-Nasr on the question of the Roma street traders, he first noted that by virtue of the principle that "ignorance of the law is no excuse", central government and local

authorities alike had to apply the provisions of the Convention and secure their implementation. If they failed to do so they were sanctioned by the courts. However, the activities of the itinerant street traders were regulated to some extent. They were required to be in possession of an authorization or licence issued by the local authorities or the municipal police, for which they had to pay a fee or tax. In practice, Roma were often sanctioned for trading without a licence or authorization, but that hardly amounted to racism.

55. Turning to the events in El Ejido, he assured Mr. de Gouttes that they had had no influence on the process of regularization of undocumented immigrants. To the best of his knowledge, there were between 70,000 and 100,000 such persons.

56. He explained to Ms. January-Bardill that, although no monitoring and control mechanisms existed as such, senior officials in government administration and bodies such as the Civil Guard took particular care to ensure that their subordinates complied with the rules of conduct. As for the airlines, they were free to choose what passengers they took on board their aircraft, and had never had sanctions imposed upon them.

57. Lastly, he informed Mr. Nobel that the Government had never abdicated its responsibilities with regard to refugees and that Spain applied the conventions on refugees to the letter. One way of seeking refugee status was to apply through the embassies.

58. Ms. VEVIA ROMERO (Spain), replying to Mr. Shahi, said it would be difficult to analyse the six cases referred to in paragraph 42 of the report in any detail. The cases differed greatly, and dealt with immigrants who had been unable to take ship, as well as with acts of violence or provocation directed against Moroccan workers. However, all those cases had resulted in sentences, and it was worth mentioning that establishment of a racist connotation could result in the imposition of a more severe sentence on the offender.

59. Following the events in El Ejido, the police had received 30 or so complaints and had questioned more than 100 Spaniards and Moroccans. More than 40 proceedings were currently pending in connection with that affair.

60. Mr. GOMEZ-LOBO (Spain) replying to Mr. de Gouttes, said that after the incidents which had occurred at El Ejido, measures had been taken to obtain suitable accommodation for the victims: 418 persons had been rehoused in 42 prefabricated units with 22 sanitary units and 15 kitchen units nearby.

61. Those incidents would not set back the process of regularizing the situation of illegal immigrants, which was due to begin on 21 March 2000 and to last for four months. On the contrary, in the most sensitive areas, the administrative authorities had set up additional reception centres for such immigrants and had signed cooperation agreements with NGOs which were responsible for assisting the administration in that operation.

62. Mr. ALBALADEJO CAMPOS (Spain) stated, with regard to the behaviour of members of the security forces, that they and persons who had frequent contact with aliens received initial and in-service training in the fields of human rights and combating racial discrimination. The officers in charge of law enforcement units were under an obligation to discipline staff who, in

the exercise of their functions, engaged in xenophobic or racist behaviour, although admittedly it was often difficult to ascertain whether such reprehensible conduct had been prompted by racist feelings.

63. Mr. RECHETOV (Country Rapporteur) thanked the Spanish delegation for its frank replies to Committee members' questions. The Committee considered that the declaration made by Spain under article 14 of the Convention was accompanied by a reservation.

64. Furthermore, the Committee was concerned by the increasing number of overt displays of xenophobia or racism by the population and authorities and requested information about the steps being taken by the Government to halt that trend. It would be helpful if the State party supplied written rather than oral information about court judgements on that subject, as it had done, so that the Committee could study the material in greater depth.

65. It was to be noted that the Government had made a great effort to improve the situation of Gypsies. Nevertheless, no statistics existed on that sector of the population. The Committee hoped that the State party would remedy that state of affairs in its next periodic report.

66. The Committee would observe with interest the implementation of the new Aliens Act, which ought to make it possible to legalize the status of many foreigners.

67. Similarly, it would attentively monitor the situation in the future with regard to racial discrimination when it came to finding a job or housing and in respect of linguistic discrimination.

68. He said that, on the whole, the Committee was satisfied with the dialogue with the Spanish delegation and invited the State party, when it submitted its next report, to supply a more comprehensive document containing precise data on the ethnic composition of the population and on the economic circumstances of the various groups in question.

69. Mr. PEREZ-HERNÁNDEZ Y TORRA (Spain) said that the members of his delegation had taken due note of the Committee's observations and questions and that his Government would do its best to respond to them in Spain's next report. Endeavours would likewise be made to improve the presentation of the report in accordance with the Committee's wishes. He stressed that Spanish society was very active in defending human rights in all fields, especially where the protection of refugees was concerned. Lastly, he announced that the Government was willing to cooperate in trying to solve the problems raised.

70. The CHAIRMAN thanked the delegation for its constructive attitude and open-mindedness and welcomed the State party's desire to pursue the dialogue. The Committee had therefore completed its consideration of the fifteenth periodic report of Spain.

71. The Spanish delegation withdrew.

Fourteenth periodic report of Tonga (CERD/C/362/Add.3)

72. The CHAIRMAN said that the Committee would examine the State party's report in the absence of a delegation.

73. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) said that the Committee could understand why the Kingdom of Tonga might have difficulty in sending a delegation. The country had submitted its report on time, thus exhibiting a praiseworthy promptness. In drawing up its report, it had based itself on the comments made by the Committee when the previous report had been considered. That positive attitude could only enrich the dialogue with the Committee.

74. It was to be noted that the exercise of fundamental rights by both nationals and non-nationals was still guaranteed by the Constitution, since no law or amendment infringing those rights had been adopted.

75. It was not enough to assert that the current legislative, judicial, legal and administrative framework in Tonga provided for the implicit implementation of the Convention, in that the State party neither practised nor encouraged racial discrimination. It was essential from a legal and a practical point of view that specific legislative texts be adopted. The Committee therefore again invited the State party to pass legislation giving effect to the provisions of the Convention.

76. No action had been taken on the Committee's recommendation that the State party should adopt laws giving effect to article 4 of the Convention. The State could not claim that discrimination was non-existent because no court case dealing with that subject had been reported, since the explanation for that situation might be that the population did not know its rights in that connection or that there was no specific legislation. That being so, it was fortunate that no organization which practised or encouraged racial discrimination or incited racial hatred existed in Tonga. The Committee therefore again recommended that the State party should pass laws permitting the implementation of article 4 of the Convention and, at the same time, pointed out that that was an obligation incumbent on States parties to the Convention.

77. As far as the implementation of article 5 of the Convention was concerned, a number of rights set forth therein were secured by constitutional provisions or administrative practice. The Committee would, however, have liked to know how provisions relating to those rights were actually implemented.

78. In that connection, the Committee was pleased to note the provisions on the rights to vote, to stand for election and to leave the country. He asked whether the authorization that non-Tongans had to obtain if they wished to marry a Tongan was automatically granted if the non-Tongan had complied with the requirements of the administrative authorities. Furthermore, he wished to know if that authorization was given without discrimination on grounds of ethnicity or nationality.

79. Why could non-Tongans not buy land and why were naturalized Tongans not entitled to hereditary tax concessions under article 29 of the Constitution? Did that discrimination equally affect all naturalized foreigners? Moreover, the inferior status of women in Tonga was worrying.

80. The Committee welcomed the fact that the State party had agreed to incorporate the provisions of the Convention in its domestic law. It was happy to learn that a census had been conducted in 1996 which had confirmed the existence of persons belonging to different ethnic or national groups, although the majority of the population was of Polynesian descent.

81. Turning to the obligation to provide a core document, the Committee could not regard the current report as such, for it did not contain the information required by the consolidated guidelines concerning the first part of the reports that States parties had to submit in pursuance of the various human rights instruments.

82. The Committee noted with satisfaction that the State party was prepared to avail itself of the assistance of the Office of the United Nations High Commissioner for Human Rights.

83. Moreover, the Committee hoped that the State party would ratify the amendment to paragraph 6 of article 8 of the Convention.

84. The Committee could only recommend that States parties should make the declaration provided for in article 14 of the Convention, but that decision was up to them.

85. Mr. de GOUTTES hailed the efforts made by the State party to submit its report, despite the country's limited resources. He endorsed the comment of Mr. Valencia Rodriguez that the Kingdom of Tonga should adopt specific legislation permitting the implementation of the provisions of the Convention. He also said that the provisions on marriage were inconsistent with article 5 (d) (iv) of the Convention.

86. The CHAIRMAN agreed with the remarks of the previous two speakers and acknowledged the efforts made by the State party. The Committee had completed its consideration of the fourteenth periodic report of Tonga.

The meeting rose at 1.05 p.m.

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Fifty-sixth session

SUMMARY RECORD OF THE 1385th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 March 2000, at 3 p.m.

Chairman: Mr. SHERIFIS
later: Mr. VALENCIA RODRIGUEZ (Vice-Chairman)
later: Mr. SHERIFIS (Chairman)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Eighth to twelfth periodic reports of Rwanda (CERD/C/335/Add.1)

1. At the invitation of the Chairman, Mr. Kananura (Rwanda) took a place at the Committee table.

2. Mr. KANANURA (Rwanda) said that Rwanda had acceded to the Convention in 1975, and had also ratified a number of other international instruments in the fields of human rights and disarmament. The Government regretted that it had been unable to submit its eighth to eleventh reports on time, owing to the armed conflict and massacres culminating in the genocide of 500,000 persons in 1994. The genocide had been the fruit of a culture of impunity and denial of the rule of law, resulting in the exclusion of a part of the population. The Government had to rebuild and restore the social fabric in a country which had lost a million people. To do so, in July 1994 the Government of National Unity had rapidly adopted a policy aimed at establishing a State based on the rule of law, respect for human rights and due regard for the main international instruments, including the Universal Declaration of Human Rights, the principal United Nations human rights treaties, the Convention on the Prevention and Punishment of the Crime of Genocide Convention, the International Convention on the Suppression and Punishment of the Crime of Apartheid and the African Charter on Human and People's Rights.

3. It also had set out to establish national instruments to protect human rights based on the Arusha Peace Agreement, the Declaration of the Rwandan Patriotic Front (RPF) of 1994 concerning the establishment of national institutions and the Protocol of Agreement between the various political forces on the establishment of institutions, signed on 24 November 1994. Since then, institutions had been established in the executive, legislative and judicial branches, with the five parties which had taken part in the Arusha Peace Agreement represented in the executive branch and eight parties represented in the legislature, the Transitional National Assembly. Under the Arusha Agreement and in the agreement with all the parties thereto, the Government had undertaken to set up four institutions: the National Human Rights Commission, which had been established in 1999 with the support of the Office of the United Nations High Commissioner for Human Rights; the National Unity and Reconciliation Commission, which had been created in 1999 to facilitate discussions to ensure reconciliation and educate the population; a legal and constitutional commission which was currently being established to bring national legislation into line with the requirements of the Peace Agreement and to prepare a new body of laws which was to apply after the period of transition; and an electoral commission, which was to be set up in 2001. The aim was to establish a society in which no one was excluded or discriminated against and where all could live once again in harmony. Weekly meetings were held between the President, Vice-President, Prime Minister and senior officials to discuss ways of promoting reconciliation.

4. One of the most serious problems facing Rwanda was the lack of an effective justice system. There were still some 120,000 prisoners held in prisons and communal cells (cachots). In 1995 the Government had convened an international conference to ask not only for material

assistance, but also for ideas on how to rebuild the shattered justice system and social and economic infrastructure. Some assistance had been forthcoming, for example in the form of training for magistrates, and the International Criminal Tribunal for Rwanda had been established. However, the Tribunal had only tried five persons to date; the Rwandan justice system, for its part, had tried 1,630, but 120,000 still awaited trial. In an attempt to speed up the process, the Government had established gacaca trials, gacaca being an age-old form of justice that was consistent with the country's traditions, social values and customs. A seminar had recently been held in Copenhagen on the possibility of using such trials to solve the problems in the justice system. Gacaca was a participatory justice system which would involve all Rwandans and would sensitize all members of society to the issues. Clearly, there were some people incarcerated who did not deserve to be, and there were also some who were free who had taken part in the genocide. It was hoped that by involving the entire population, the Rwandan people would be able to come to terms with the tragedy.

5. The genocide had left Rwanda with a population which was 54 per cent female, and many heads of household were in fact young girls. Until 1998 girls and women had had no rights of inheritance. The Government had recently rectified that situation by adopting a new Marriage and Successions Act which gave women and girls the right to inherit.

6. Mr. NOBEL (Country Rapporteur) welcomed the Rwandan Government's resumption of its dialogue with the Committee. The report currently under consideration was the first to be submitted since the genocide and the unspeakable horrors that had been inflicted upon the Rwandan people. It was a comprehensive report, drafted in accordance with the Committee's guidelines. Further interesting information, for example on the Transitional National Assembly, the National Human Rights Commission, the development of democracy and the status of the genocide trials, had been furnished orally. Rwanda had constantly been on the Committee's agenda in recent years, in particular under its early warning measures and urgent action procedures.

7. The report gave some information on the population, but did not provide a proportional breakdown by ethnic group. According to the non-governmental organization (NGO) Minority Rights Group International, prior to the genocide there had been 7.5 million inhabitants - about 1 million more than the population reported for 1996 - of whom 90 per cent had been Hutus, 9 per cent Tutsis and 0.4 per cent Twa. The same NGO estimated that 500,000 Tutsis had perished, and that the Twa minority had been victimized by both Hutus and Tutsis. It would thus appear that the proportion of Tutsis had fallen to under 5 per cent of the population and that the Twa minority had become still smaller than it had been.

8. The report stated that the Government extended the same opportunities to each ethnic group, but gave no information on how that was achieved. That would be of interest to the Committee, especially since, according to the report, the previously applied "policy of balance" had been abolished. Did the Transitional National Assembly have any power over the national budget or taxation matters?

9. With regard to the independence of the judiciary, the Special Rapporteur on the independence of judges and lawyers had sent an urgent communication to the Government in 1997 concerning alleged violations of the independence of judges and lawyers engaged in the

genocide trials. Judicial officers had reportedly been dismissed or forced to leave the country out of fear for their lives because of military and Government interference in their work; some had been arrested, detained and charged with participation in the genocide, and others had received threats, had disappeared or had even been killed.

10. The periodic report pointed to a lack of human and financial resources, which was understandable in the light of the country's recent history. Rwanda was entitled to more international support. The establishment of the National Human Rights Commission was a very positive step. Was the Commission able to receive individual complaints? If so, how many had it received? Was it entitled to initiate investigations, and what sort of investigative powers did it have to conduct them in the event that the authorities refused to cooperate with it? Did it have any decision-making powers? What staff and resources did the Commission have at its disposal?

11. What was the significance, with regard to racial discrimination, of the adoption of the land bill referred to in paragraph 38? The report failed to provide information on the percentage of children attending primary and secondary schools, and did not say how many went on to university.

12. Nearly all the legislation cited in the report dated from before the 1994 genocide, which meant that it had proved ineffective at least on that occasion. It was therefore a matter of concern to the Committee that the legislation should be implemented properly. The report provided information on the law and the Government's aspirations, but very little on implementation, complaints, case law, the number of convictions for racial discrimination and the actual situation of the country's people. He therefore felt it necessary to review certain aspects of the situation in Rwanda on the basis of various reports to the United Nations Commission on Human Rights and information from the United States Department of State, Human Rights Watch and Amnesty International.

13. The security situation remained poor not only owing to persistent security problems throughout the Great Lakes region, but also because of hostility within Rwanda itself. The Interahamwe militias still received training and arms in some neighbouring countries and undertook raids into Rwanda, although the situation had improved to the point where the staff of the International Committee of the Red Cross (ICRC) were able to travel without armed escorts. Still, hundreds and perhaps thousands of killings and disappearances had been reported as late as 1998. The establishment of local defence forces, with the support of the Government, was of concern to the Committee. Such forces were set up by villages and were equipped with firearms and machetes. They received extremely summary training, and among their members were some who were very young. It would be appreciated if the delegation could comment on those reports.

14. Freedom of movement was restricted, with most Rwandans confined to their communes by a system of registration and identity cards. They were reportedly not allowed to move around the country or go abroad. While the Government might invoke security considerations to justify such restrictions, they were a violation of human rights, and they also resulted in a less flexible labour market and hampered economic development, as had been pointed out by the World Bank. Freedom of opinion, expression and the press were apparently not guaranteed.

15. About 130,000 people were awaiting trial in facilities designed, according to the report, to house 41,550. According to information from the United States Department of State, the actual prison capacity was only 17,000. The overcrowding was deplorable and inhuman. Over 3,000 prisoners had reportedly died in 1998, and about 1,000 in 1999, some from ill-treatment. Conditions were poorest in the communal cells (cachots) which housed some 40,000 prisoners. There was a large proportion of young children in detention. Relief organizations had difficulty in providing assistance to such prisoners, especially in the communal cells, as villagers could not understand why aid was provided to prisoners but not to themselves.

16. Trials unfortunately continued to proceed very slowly, owing in part to limited human and financial resources. For example, there were not even any files on 40,000 of those still awaiting trial. Some 2,400 cases had been tried by the end of 1999, of which 14 per cent had resulted in the death penalty, 30 per cent life imprisonment, 34 per cent one to twenty years imprisonment and 19 per cent acquittal. The latter figure was very high and implied that, indeed, many of the prisoners should not have been there. The remaining 3 per cent were unaccounted for and might even have died. It was, however, very positive that no execution had taken place since April 1998. He noted the difficulty of protecting witnesses, who were often intimidated and threatened into not testifying.

17. In an effort to deal with the enormous caseload of prisoners, both adults and children, the Government had undertaken a bold programme of using traditional village courts, called gacaca. Some 30,000 local judges had been selected and could deal with all but the most serious crimes. They had the authority to order imprisonment, community service and repayment of damages. The election process for the judges, who were respected members of the village community, was very open, as were the trials, which were held in public. That system, although raising concerns about issues such as the right to counsel, due process, the right to appeal, proper treatment, detention during trial, seemed to be a very interesting initiative.

18. The Government had made commendable efforts to reduce ethnic tensions by eliminating any mention of ethnicity on identification cards, appointing members of all ethnic groups to government positions and integrating members of the former Rwandese Armed Forces (FAR) into the national army.

19. The United Nations and the international community must continue to cooperate with Rwanda on all levels as had been stated by the Secretary-General on 16 December 1999, in order to avoid a recurrence of the events of the past.

20. Mr. VALENCIA RODRIGUEZ said that the war and genocide had had devastating consequences for Rwanda. Much of the male population had been killed and approximately 34 per cent of households were now headed by women and, in 1997, 70 per cent of the population was living in poverty. Much remained to be done to rebuild the country.

21. Unfortunately the soldiers of the losing side and the Interahamwe militias had not been disarmed and were still receiving assistance from some countries. Pacification and reconciliation would therefore take a long time, which would affect implementation of the Convention. It was noteworthy that one of the Government's first acts had been to seek to rebuild the judicial system

in order to bring those responsible for the genocide to justice. Letting the guilty go unpunished could lead to renewed bloodshed; it was not surprising that approximately 95 per cent of the prison population was accused of genocide.

22. One of the first tasks of the newly created National Human Rights Commission had also been to study violations of human rights and to begin legal proceedings to punish those violations. He hoped the Government would keep the Committee informed of progress made in that area.

23. One of the Government's objectives was to eliminate the racial discrimination which had been one of the causes, if not the sole cause, of the genocide. In that context, he noted the measures described in paragraphs 31 and 32 of the report, and inquired about the status of the Convention vis-à-vis domestic law and whether it could be invoked directly before the courts.

24. With regard to article 2 of the Convention, official policies and legislation had been revised (paras. 37 and 38). The establishment of a fund to assist the most needy survivors of the genocide, targeted at education, health care and housing (para. 43) was most welcome. He hoped that the delegation would provide more information in the future on any positive results of those measures.

25. With regard to article 4 of the Convention, article 393 of the Criminal Code and Act 8/96 implemented article 4 (a) but more information was needed on measures to implement article 4 (b) on the prohibition of racist organizations, which was especially important for Rwanda given its past history. Information on provisions of the Constitution which implemented article 5 of the Convention was also fairly satisfactory but the next report should explain how those provisions were being implemented in practice.

26. Although the limitations on the right to freedom of movement described in paragraph 50 were understandable, given Rwanda's history of conflict and foreign interference, it was to be hoped that as pacification continued those limitations would gradually be eliminated. With regard to the right to inherit (para. 54), he welcomed the information that the rights of children and women were increasingly being recognized by the courts and that the bill being debated by the Assembly would recognize equal inheritance rights for both sexes, and looked forward to receiving a copy of the text of the law once approved. With regard to the right to work (para. 40), the Committee should be kept informed of the implementation of article 25 of the Labour Code and article 30 of the Constitution.

27. The Government had made a substantial effort in providing subsidies to improve the housing situation of the Twa people (para. 61). The Committee should be kept informed of the results of that effort, which was especially laudable given the country's scant economic resources. He noted that, with regard to article 6 of the Convention, the Committee had not been informed of any case being brought before the courts and he wondered whether that was because the population was not really aware of the Convention, in which case measures should be taken to increase public awareness. With regard to article 7, the State party had launched information campaigns on human rights themes (para. 84). That work must continue and be further developed.

28. He recognized that the State party was endeavouring to implement the provisions of the Convention and that the Government's main task was to bring about reconciliation so that the country's three ethnic groups could live together in harmony. The international community must share those goals and assist in their realization.

29. Ms. McDOUGALL said she took a personal interest in the situation in Rwanda, having visited the country several times. She welcomed the resumption of the State party's dialogue with the Committee.

30. With regard to the question of impunity, she expressed satisfaction that members of the armed forces who had violated human rights and humanitarian law had been court marshalled but asked how many had been prosecuted and how many convictions or acquittals there had been. She also inquired what the State party's current relationship was with the International Criminal Tribunal for Rwanda since it had suspended cooperation in 1999. Noting that there were some 120,000 people awaiting trial for genocide in the country, she asked if the State party had some suggestions as to what measures could be taken or assistance offered by the international community to help deal with that enormous problem. Recourse to the traditional village-based gacaca justice system certainly seemed very interesting and potentially useful although it did raise some concerns about, for example, protection of due process. She would like to know what mechanisms had been put in place, how much progress had been made and whether the 30,000 local judges had begun trying any cases.

31. She asked whether the reported weekly meetings between the President, Vice-President, Prime Minister and other officials to discuss reconciliation were continuing and what policies had arisen from those discussions. In that context, it was commendable and understandable that the Government, in all its policies and actions, was endeavouring to eliminate any mention of ethnicity and eradicate ethnic discrimination, as it was in fact required to do under the Constitution and the Arusha Peace Agreement. The Government of Rwanda, like many other governments, therefore resisted developing disaggregated data containing indications of race or ethnicity but she wondered whether the State party could provide any suggestions to the Committee on how its members might continue to assess progress in the integration of all groups into the Government and the economy without such data. The Country Rapporteur had noted progress made in integrating all groups into the civil service, Parliament and the armed forces but had had access to disaggregated data.

32. With regard to housing, the report had only mentioned efforts to help one group (para. 61) but the added factor of returning refugees had aggravated the situation and heightened competition for land and housing. How was the Government addressing that issue?

33. She commended the Government for developing new legislation on inheritance rights since such problems had been exacerbated by the war, placing widows and orphans in an even more vulnerable position because, despite being heads of households, they had not been allowed to inherit.

34. The establishment of the National Human Rights Commission was a welcome development and it was to be hoped that it would succeed in the task of reconciliation. More information on its mandate, legal status, independence and powers, and on the ethnic diversity of its membership, would be appreciated.

35. She wondered whether Rwanda had called on the Office of the High Commissioner for Human Rights (OHCHR) and the Special Representative for assistance in developing a human rights awareness campaign and suggested that the State party might be able to assist the Committee in identifying early warning indicators of the racial or ethnic breakdown of society which might lead to genocide.

36. Mr. Valencia Rodriguez, Vice-Chairman, took the Chair.

37. Mr. FALL, thanking the representative of the State party for the new information provided and noting that the Government of Rwanda was endeavouring to promote reconciliation and implement the Convention, said that the establishment of the National Human Rights Commission had been a positive step but more information was needed on progress made as well as on its makeup, independence and day-to-day functioning. He asked what specific measures had been adopted to promote national reconciliation and whether the teaching of human rights was compulsory. The best way to teach human rights was to seize every opportunity to do so, whether at school, in the media or by any other means. He raised the question of the relations between the Government of Rwanda and the International Criminal Tribunal for Rwanda. The fact that so many prisoners were still awaiting trial for genocide in Rwanda itself raised concerns about the protection of their human rights.

38. With regard to the large numbers of refugees and displaced persons as a result of the genocide and the wars in the Great Lakes region, he inquired what measures the Government had taken to facilitate the return of displaced persons and what the status of refugees was under current national legislation.

39. Mr. SHAHI, endorsing previous speakers' analysis of the information presented, noted the many positive developments such as the establishment of the National Human Rights Commission and efforts to rebuild the judicial system and bring to trial those suspected of involvement in the genocide. He expressed concern that in 1999 the Government of Rwanda had suspended cooperation with the International Criminal Tribunal for Rwanda, and, with regard to the enormous number of prisoners still awaiting trial within the country, mostly for the crime of genocide, requested more information on how many had been acquitted or convicted, and what sentences had been imposed. Had the process of sorting out all detainees' case-files, scheduled for completion by 31 December 1999 at the latest (para. 24), actually been completed?

40. Notwithstanding the Government's programme to rebuild the justice system and train judges and prosecutors, it would be impossible to hold speedy trials for all those persons still in detention. The village elders who had been elected to hear such cases could apparently try those persons for murder. What kind of sentencing powers did they have? Could they impose capital punishment?

41. The international community's role in Rwanda had been less than constructive. It was a subject of concern that certain countries were still providing arms to those implicated in the genocide, and he sympathized with the Rwandan Government because of the enormous problem it was facing in restoring a sense of security.

42. Mr. PILLAI asked how the National Human Rights Commission had evolved and how it cooperated with the executive and the legislative branches. As the Commission was also responsible for hearing individual complaints, it was to be hoped that that would take some pressure off the courts. Paragraph 27 of the report stated that the Commission transmitted its reports on all findings of human rights violations to the President, the Government, the National Assembly and the Supreme Court; which of those authorities was truly concerned with the actual implementation of the Commission's recommendations?

43. Paragraph 42 spoke of equality of opportunity in all fields, including the economy. In his view, such equality also presupposed equality in socio-economic development. Did that policy also apply to socially or economically disadvantaged persons belonging to foreign communities?

44. He referred to the poor health and hygiene conditions in Rwanda's overcrowded prisons, which were an ideal breeding ground for the spread of contagious diseases not only among inmates, but also in the population at large once prisoners were released. He appealed to the Rwandan Government to give adequate attention to maintaining proper health and hygiene in prisons.

45. Mr. de GOUTTES said that the twelfth periodic report of Rwanda provided only a legal vision of the situation, with ample data on legislative measures but little information on their practical implementation.

46. He wished to address several points already raised in the Committee's decision 3 (54) and decision 5 (53) on Rwanda. One concerned the situation of detainees and overcrowding in prisons. Of the estimated 130,000 detainees, some 4,500 were minors, 243 of them under 14 years of age (report, para. 25). Was there a special procedure for trying those children? How many children had been found guilty, and what sentences had been handed down?

47. Secondly, what had been the result of efforts to rebuild the justice system, and had the Government resumed cooperation with the International Criminal Tribunal for Rwanda?

48. Thirdly, according to information from the United Nations High Commissioner for Refugees (UNHCR), Rwanda had taken in refugees from the Democratic Republic of the Congo, Burundi and eastern Africa, who had been placed in the three camps of Kibiza, Gihembe and Kigeme. UNHCR reported that treatment in those camps varied according to the ethnic composition of the populations concerned and that there were severe problems of hygiene in all of them. Could the representative of Rwanda provide further information on the situation in the camps and indicate whether the Rwandan Government was planning to adopt legislative measures in favour of those refugees? Also, did Rwanda intend to accede to the 1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons?

49. Mrs. ZOU Deci said that the report did not seem to contain any reference to the question of refugees, which posed an enormous problem for Rwanda. Refugees from the Democratic Republic of the Congo and Burundi were currently living in refugee camps under poor conditions. Some of the refugees had not been recognized as such by the Rwandan Government. How was Rwanda planning to deal with the problem?

50. Paragraph 25 stated that 95 per cent of detainees would be tried for genocide. Were the 243 detained children under 14 years of age also accused of that offence? Could they really be held responsible for their acts? Had any of those children been tried? If so, what sentences had been imposed? What would be done with those 243 children?

51. Mr. Sherifis, Chairman, resumed the Chair.

52. Mr. ABOUL-NASR said that his view on the question differed from that of other members. According to paragraph 25, more than 130,000 persons were detained on charges of genocide. After the Second World War, far fewer persons had been brought before an international tribunal for war crimes and crimes against humanity. The issue was not how to take care of children in prisons or the conditions of detention of large numbers of accused persons. It was a well-known fact that there had been foreign intervention in Rwandan affairs. Why had no one asked who was financing the war? To what extent were the neighbouring countries helping, or not helping, to resolve the conflict? Mr. Nobel had missed an important point: all his sources of information were European or American. He had not consulted the Organization of African Unity (OAU) on what missions it had sent, why they had failed or what decisions it had taken, despite the fact that OAU was the closest regional organization to Rwanda and thus the one most familiar with the issues.

53. How could 130,000 persons possibly be brought to justice? Even assuming that as many as 1,000 persons could be tried in a year, it would take 130 years to bring them all to trial. The National Human Rights Commission was virtually powerless. Given the situation, the Committee must request the international community, through the Security Council, to help disarm the population in the same way as it had done in Kosovo. Was it not applying double standards to save European lives and not African ones? The Committee must also launch an appeal for an amnesty, because it was simply impossible to bring 130,000 persons to trial. Although it was not necessary to forget, the time had come to forgive. In any case, those really responsible for the genocide in Rwanda had fled and had bank accounts in Switzerland.

54. Mr. Kananura (Rwanda) withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Draft resolution on contemporary conflicts (CERD/C/56/Misc.28) (continued)

Statement on the social and political significance of difference in ethnic origin (CERD/C/56/Misc.29) (continued)

55. The CHAIRMAN recalled that a working group had been set up to draft two different texts, a draft resolution on contemporary conflicts (CERD/C/56/Misc.28) and a statement on the social and political significance of difference in ethnic origin (CERD/C/56/Misc.29), on the basis of proposals originally submitted to the Committee by Mr. Banton.

56. Mr. BANTON, speaking as convenor of the working group, said that a number of substantive amendments to the two texts, proposed by Committee members who had not taken part in the working group, warranted consideration by the Committee as a whole. One of those amendments was to transpose the last three sentences of document CERD/C/56/Misc.29, namely those referring to problems in Nigeria and Indonesia, to the draft resolution on contemporary conflicts (CERD/C/56/Misc.28).

57. Mr. ABOUL-NASR said that the basic intent of document CERD/C/56/Misc.29 was to issue a statement in connection with recent events in Austria. Pending further clarification of the position of the Austrian Government on such matters he was not willing to lend his support to such a statement. The scope of the document should be broader, extending to violence based on ethnic differences in Nigeria, Indonesia and also other European States.

58. Turning to the draft resolution (CERD/C/56/Misc.28), he suggested that in operative paragraph 1 mention should be made of the violations carried out by the Serbs against the Albanians as well as the reprisals by the Albanians against the Serb and Roma minorities. In operative paragraph 2 a reference should be included to the need for the safe return of refugees to Chechnya. In operative paragraph 3 the word "particularly" should be inserted before "in Burundi" since Burundi was not the only country in which the Committee was calling for an end to ethnic violence.

59. Mr. LECHUGA HEVIA, referring to paragraph 3 of document CERD/C/56/Misc.29, suggested that the beginning of the third sentence, which read: "Since a political party accused of cultivating racist sentiments is now part of the Austrian Government," should be replaced by "Since several political parties in different countries are cultivating racist sentiments,".

60. Mr. FALL said he was concerned about the resurgence of extremist right-wing parties in Europe and their racist ideology which posed a threat to the Convention. If the Committee did not wish to refer directly to the situation in Austria it should nonetheless mention the problem in general terms. It might also wish to include a reference in document CERD/C/56/Misc.29 to the proliferation of new forms of racial discrimination, including hate sites on the Internet.

61. Mr. RECHETOV, referring to the draft resolution, endorsed the suggestion by Mr. Aboul-Nasr to include a reference in the operative paragraph 2 to the need for the return of refugees to Chechnya. However, it was important to remember that the hundreds of thousands of refugees in question were not only Chechens but also Russians. He would therefore qualify the suggested amendment by referring to the return of all refugees, irrespective of their nationality.

62. Mr. de GOUTTES said he had proposed transposing part of the statement in CERD/C/56/Misc.29 to the draft resolution in document CERD/C/56/Misc.28 since the gravity of the violations and intensity of the violence in Nigeria and Indonesia meant that they should be regarded as contemporary conflicts and dealt with under the relevant draft resolution.

63. The basic intent of the statement on the social and political significance of difference in ethnic origin had not been to refer solely to the situation in Austria, but to express concern about the exploitation and even manipulation of racist sentiments by political parties in some European countries. In a general statement drafted along those lines there ought to be a specific reference

to the Austrian Government as a good example of the type of situation that was of concern to the Committee. Moreover, as currently worded, the text did not imply any criticism of the Austrian Government, merely referring as it did to the need to monitor developments closely. He was therefore in favour of retaining the statement in CERD/C/56/Misc.29 as currently worded, subject to the removal of the last three sentences.

64. Ms. McDOUGALL said she was rather confused about the basic intent of the two texts, particularly CERD/C/56/Misc.29. She endorsed the suggestion to incorporate the statement on Nigeria and Indonesia in the draft resolution, yet failed to understand why no mention had been made of the ongoing conflict in Sudan. If the draft resolution was to be really useful then it should cover all contemporary conflicts based on racial discrimination.

65. If the purpose of document CERD/C/56/Misc.29 was to make a statement about the rise of political parties in Europe that played on xenophobia then that should be stated more clearly. As currently drafted the text seemed to be confusing two different ideas and did not succeed in conveying either of them successfully. Paragraphs 1 and 2 of the statement certainly needed redrafting, in particular the latter, where she took issue with the sentence "Differences in the appearance and behaviour of individuals often result in their suffering discrimination".

66. Mr. VALENCIA RODRIGUEZ said that he was not in favour of transposing the last few sentences of CERD/C/56/Misc.29 to the draft resolution. The result would be an unbalanced statement on the social and political significance of difference in ethnic origin by referring exclusively to the situation in Austria. He preferred the solution suggested by Mr. Lechuga Hevia. Furthermore, the statement in CERD/C/56/Misc.29 should cover other aspects of racial discrimination, namely those referred to in the statement by the High Commissioner for Human Rights on which the Committee's statement was supposed to have been based.

67. The CHAIRMAN agreed that the original points raised by the High Commissioner seemed to have been somewhat lost in the second draft of the statement now before the Committee.

68. Ms. JANUARY-BARDILL shared Ms. McDougall's concerns about document CERD/C/56/Misc.29. In Africa, ethnicity problems were very much connected with the legacy of colonialism - one vitally important issue that seemed to have been overlooked. The Committee would need to carry out a far more thorough analysis of the situation before issuing any statement. She was not satisfied with the text as it stood.

69. Mr. BRYDE, referring to the draft resolution, endorsed Mr. Aboul-Nasr's suggestion concerning operative paragraph 1; one of the recurring tragedies of ethnic conflicts was that once the formerly persecuted minority became the majority group, it often perpetrated violations against the new minority.

70. He shared the concerns expressed by Ms. McDougall and Ms. January-Bardill regarding document CERD/C/56/Misc.29. He disagreed with the statement made in paragraph 2. Also, paragraph 1 would be much clearer if it was redrafted to the effect that the exploitation and manipulation of ethnic differences was the cause of conflict.

71. Mr. YUTZIS echoed the concerns voiced about the lack of clarity in document CERD/C/56/Misc.29, particularly paragraph 2. At the outset there had been general agreement that the central theme of the statement should be the need for early-warning measures and urgent action procedures by the Committee, yet the only reference to them was in the preamble of the draft resolution. Clearly both texts required substantive revision and since the issues they covered were so closely related it might be preferable to deal with them in one consolidated text.

72. Mr. NOBEL agreed that during the drafting process the Committee had lost sight of the two main points at issue: how situations of ethnic difference were manipulated to such an extent that they gave rise to conflict; the Committee had an important role to play in such situations under the relevant provisions of the Convention.

73. Mr. SHAHI endorsed the suggestion made by Mr. Aboul-Nasr regarding operative paragraph 1 of the draft resolution. With respect to document CERD/C/56/Misc.29, he had no objection to incorporating a reference in the draft resolution to the situation in Indonesia. The conflict in Nigeria came under a different category, however, since the Nigerian Government was not directly or indirectly involved in it. He endorsed Mr. Lechuga Hevia's suggestion for the rewording of the third sentence of paragraph 3, for the reasons he and other members had given. A further reason for deleting the reference to the situation in Austria was that it had not yet given rise to a serious conflict, as paragraph 1 of the document implied.

74. Mr. ABOUL-NASR pointed out that attacks against foreigners were not carried out or encouraged solely by members of extremist right-wing political parties. There had been many instances of violence perpetrated by labourers, who presumably had sympathies with left-wing parties, against foreigners viewed as potential competition on the labour market.

75. Mr. DIACONU suggested that the two texts should be merged as one document and given a more general title than contemporary conflicts. The document should begin with the preambular paragraphs of the draft resolution and then deal in separate paragraphs with the following issues: Kosovo; Chechnya; Burundi; Indonesia and Nigeria; and the rise of political parties with a racist ideology in Europe, in particular Austria. The document should conclude with a slightly amended version of operative paragraph 4 of the draft resolution.

76. Mr. de GOUTTES expressed support for that proposal.

77. The CHAIRMAN said he would take it that the Committee was in favour of Mr. Diaconu's proposal. He invited Mr. Banton to draft the text, along the lines suggested by Mr. Diaconu and taking into account comments and suggestions made during the discussion that had just taken place.

78. It was so decided.

The meeting rose at 6 p.m.

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Fifty-sixth session

SUMMARY RECORD OF THE 1386th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 March 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

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Visit of the High Commissioner for Human Rights

General debate

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The meeting was called to order at 10.05 a.m.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION; WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 12)

Visit of the High Commissioner for Human Rights

1. The CHAIRMAN welcomed the High Commissioner for Human Rights and said that, at the beginning of the session, the Committee had received the texts of the High Commissioner's statements and press releases on her Office's recent activities in connection with ethnic conflicts, which were of great interest to the Committee as it intended to adopt a decision on that matter. He would be grateful if the Committee could receive such texts as soon as they were issued and therefore requested the High Commissioner to give instructions to that effect.

2. He reiterated the Committee's wish to play a central or, indeed, leading role for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, both during the preparatory phase and at the Conference itself. The Committee was indubitably the most experienced and competent organ in the struggle against discrimination. He recalled that it had adopted a decision on the Conference (decision 5 (55) of 26 August 1999) and had already contributed to preparations for it through the theoretical papers which had been drafted by some members and through the contact group set up for that purpose. The High Commissioner's advice about the Committee's contribution to the Conference would be welcome.

3. Lastly, he thanked the High Commissioner for her support for the proposal to hold the Committee's March sessions in New York and hoped that it could continue to count on her decisive backing to achieve that end.

4. Mrs. ROBINSON (High Commissioner for Human Rights) welcomed the opportunity to exchange views with the Committee on the Elimination of Racial Discrimination, given the importance of its involvement in preparations for the World Conference. She stressed that contact should be maintained with outgoing Committee members so that their services could be enlisted if necessary.

5. From the large number of reports to be examined during the session, it appeared that the steps taken by the Committee to bring pressure to bear on States parties whose reports were long overdue and to achieve greater efficiency in the consideration of reports had already borne fruit. Moreover, arrangements to facilitate the presentation of communications from individuals under article 14 were welcome, since during preparations for the Conference it was necessary to publicize the existence of the communications procedure more widely, so that victims of racist acts knew that they had such a remedy.

6. As part of preparations for the Conference, in February her Office had organized an expert seminar on remedies available to the victims of acts of racism, racial discrimination, xenophobia and related intolerance and on good national practices in that field, in which Committee members had played an active part. She proposed that, at the Conference, the

Committee should help to establish a precise definition of "racist act" by listing the particular forms taken by racism in society, drawing a profile of victims and organizations inciting racial hatred and by assessing public reaction. Another subject to be studied was the appearance of new forms of discrimination which, by their very nature, rendered the task of victims seeking justice even harder.

7. She had closely followed the Committee's work, especially its deliberations with a view to drafting general recommendations on remedies for victims of acts of racial discrimination, gender-related discrimination and lesser forms of discrimination, and noted that at its August session the Committee would examine discrimination against the Roma. She had been made aware of the scale of such discrimination during a visit to Kosovo.

8. In the recent appeal launched by her Office to the international community for backing in the form of voluntary contributions, special emphasis had been placed on support for treaty-monitoring bodies, so that they had the resources to follow up the ever-increasing number of individual complaints.

9. With reference to the Committee's activities regarding prevention, including early warning and urgent procedures, she said that it was extremely important to increase and enhance the capacity of the machinery for protecting human rights to detect and signal potential conflicts or any other situation likely to escalate into violations of human rights. As the Committee had pointed out, such situations were often characterized by a build-up of violence prompted by racial or ethnic hatred or xenophobia. In her report to the Commission on Human Rights, she had quoted the preventive measures developed by the Committee, the only treaty-monitoring body to have done so, as an example of capacity building for prevention at international level.

10. She welcomed the Committee document containing decisions 9 (53) and 5 (55) on the Committee's suggestions, including that concerning a plan of action as an outcome of the Conference, which would be used at the first session of the Preparatory Committee. Preparations had to be practical and action-oriented and the point had been made to her by the body responsible for the five-year review following the Beijing Conference that, when the plan of action was drawn up, thought should be given to methods of effectively reviewing it five years later.

11. She was pleased that, at the fifty-fifth session of the Commission on Human Rights, the Committee had presented six expert papers containing proposals regarding the World Conference and that two further papers had been drawn up that year, one by Mr. Diaconu and Mr. Rechetov on reservations to the Convention, and the other by Ms. McDougall on the gender dimensions of racial discrimination.

12. The World Conference would be held in South Africa, probably from 31 August to 7 September 2001. She hoped to receive information soon about the exact venue, which had not yet been determined. The first meeting of the Preparatory Committee would take place from 1 to 5 May 2000 immediately after the session of the Commission on Human Rights. The 20 or so official documents which had been drawn up for that meeting had kindled considerable and growing interest on the part of Governments, international organizations and non-governmental

organizations. All those texts would be posted in English and French on her Office's Web site and it would thus be possible to follow the progress of the Preparatory Committee's work.

13. Her Office had taken advantage of Human Rights Day on 10 December 1999 to publicize the Conference. She had invited several eminent figures from various walks of life who were striving to further tolerance in their respective fields, such as politics, the promotion of the rights of women and children, literature and music. On 21 March 2000, the International Day for the Elimination of Racial Discrimination, there would be a panel discussion in which the Chairman of the Committee, Ms. McDougall and the Ambassadors of South Africa and Senegal would take part.

14. Her Office had focused its efforts on creating and expanding a Web site for the Conference. In addition, a brochure and two fact sheets were available in three languages. She saw the promotion of the Conference somewhat in terms of an election campaign, where an attempt had to be made in a short time to bring home the importance of the event. Her Office had made strenuous efforts to raise 4 million dollars to finance preparations, although that sum fell short of the amount needed.

15. Her Office would concentrate its activities in particular on a series of expert seminars to be organized during the year in Africa, Asia, Eastern Europe and Latin America, in close association with the economic commissions. The expert seminar for the western group had studied the remedies available to victims. Another seminar on human rights, refugees and multi-ethnic States, in which several Committee members had participated in December 1999, had elicited the interest of Governments and had given rise to a report which would serve as a reference document for the Preparatory Committee.

16. Moreover, the decision had been taken to establish the World Conference secretariat in the Palais Wilson. It would be headed by a former Committee Secretary, Mr. José Gómez del Prado, who would be assisted by a team of five professionals. It would also be necessary to secure the assistance of media experts and to develop closer links with non-governmental organizations in order to sensitize them to the challenges which would have to be met by the Conference organizers. The World Conference was worth the effort because it offered a unique opportunity to combat the scourge of racism, xenophobia, anti-Semitism and all forms of intolerance which, far from disappearing, were re-emerging thanks to new means of communication. That background had to inspire all participants in the preparations and encourage them to work together to ensure that the World Conference was a really outstanding event.

17. The CHAIRMAN thanked the High Commissioner and said that she would be informed by the end of the session of decisions concerning the Committee's contribution to the Conference.

18. Mr. BANTON expressed the hope that the World Conference would not be such a big disappointment as the three decades to combat racism and racial discrimination. The mistake made by States over the years had been to internationalize regional problems without securing sufficient support for their positions. The only global issues were those of migrant workers and

the Internet. The thorniest issues arose at the regional level - as, for example, in the Balkans or the Great Lakes region. The World Conference had to pay greater heed to the regional dimension. It would be desirable for regional action programmes to be drafted jointly by several States assisted by the expert services of the Office of the High Commissioner.

19. Mr. YUTZIS warmly approved the choice of Mr. Gómez del Prado as Conference Secretary.

20. Mr. de GOUTTES endorsed Mr. Yutzis' statement concerning the appointment of Mr. Gómez del Prado.

21. The Committee had expressed the wish to take a central role in preparations for the Conference by proposing subjects, making individual contributions in the form of papers, setting up a three-member contact group and arranging for the participation of Committee members in regional expert seminars. It was essential to strengthen the Committee's presence in the coming months and he particularly hoped that two Committee members, including one from the contact group, would be invited to the first session of the Preparatory Committee, which would be held from 1 to 5 May in Geneva.

22. Mr. SHAHI, drawing attention to the fact that the Secretary-General of the United Nations had publicly acknowledged that both he and the Security Council had committed errors which had made it impossible to prevent the massacres in Bosnia and the genocide in Rwanda, asked the High Commissioner to provide him with information on the reactions of Governments, non-governmental organizations and the international community concerning the need for the Security Council to take urgent steps to prevent the particularly heinous acts of genocide and crimes against humanity. The United Nations should not be content with merely condemning them when it was too late.

23. Mrs. ROBINSON (High Commissioner for Human Rights) agreed with Mr. Banton that the regional dimension was of great importance. Indeed, she had emphasized that point when advising the permanent representatives whom she had recently met in New York of the increasingly regional dimension of her Office's strategies and of the need to arrange regional preparatory meetings in the run-up to the World Conference. She had also told them about forthcoming expert seminars where it would be possible to define the main thrust of regional action programmes.

24. In response to Mr. de Gouttes' suggestion, she said that steps would be taken to ensure that henceforth not only the Committee Chairman, but also a member of the contact group, were invited to participate in the Preparatory Committee meetings.

25. The issue of prevention raised by Mr. Shahi was currently being discussed by the General Assembly and the Security Council. The report on civilians in armed conflict would be reconsidered the following month, for it was increasingly obvious that civilians were in the front line in modern conflicts. The subject of prevention was close to her heart and the report of her

Office to the Commission on Human Rights quoted the measures recommended by the Committee as a good example. Lastly, she would see to it that the Committee received the information requested by Mr. Shahi.

The meeting was suspended at 10.45 a.m. and resumed at 10.55 a.m.

General debate

26. The CHAIRMAN pointed out that the Committee had taken up the matter of its contribution to preparations for the World Conference back in August 1998, and again in March and August 1999. It had then requested the secretariat of the Office of the High Commissioner for Human Rights to assist it in the drafting of reference documents and to supply it with information about the States parties which had amended their constitutions or legislation to bring them into line with the Convention, as well as a list of States parties which had made a declaration under article 14 of the Convention and a list of States parties which had entered reservations thereto. It had likewise requested the secretariat of the Office of the High Commissioner for Human Rights to make an assessment of best practices in combating racial discrimination. That assessment should be ready for the meeting of the Preparatory Committee in May 2000. Furthermore, it had been decided to establish and maintain contact with the regional bodies participating in preparations for the Conference.

27. Ms. RAADI (Coordinator, International Conventions Team, Support Services Branch, Office of the High Commissioner for Human Rights) said that the secretariat had prepared a compilation of concluding observations adopted by the Committee since 1995 after the consideration of the periodic reports of States parties or review procedures, a compilation of the Committee's decisions, declarations and resolutions, including those under the early warning and urgent procedures, and a compilation of information about States parties which had amended their constitutions, legislation and administrative practices or had passed special laws with a view to implementing the Convention. Those documents were available and would be updated if new developments occurred.

28. The CHAIRMAN also stated that in March 1998 the Committee had decided to set up a contact group to follow the preparations for the Conference, keep the Committee informed and make suggestions as to what contribution the Committee could make to that process. It had been decided that the contact group would comprise Mr. Garvalov, Ms. McDougall and Mr. Yutzis. As Mr. Garvalov was no longer a member of the Committee, the Chairman had instructed Mr. Aboul-Nasr to consult the experts about the appointment of new members to the contact group.

29. Mr. ABOUL-NASR said he first wished to remind the secretariat of the Office of the High Commissioner for Human Rights that it was vital to keep the Committee informed, through its Chairman, of all activities, decisions and other matters that concerned the Committee's work. The secretariat seemed to have departed somewhat from that rule. Similarly, no decision should be taken on behalf of the Committee without informing it.

30. That comment applied equally well to the contact group, which had not informed the Chairman, himself at that time, of its activities.

31. Lastly, his consultations had not produced a consensus on the composition of the contact group. He proposed Ms. January-Bardill and Mr. Shahi in addition to the two other members.

32. Mr. YUTZIS, speaking as a member of the contact group, deeply regretted that Mr. Aboul-Nasr, during his term of office as Committee Chairman, had not been regularly informed by the group about the Committee's participation in preparations for the World Conference. The contact group took due note of Mr. Aboul-Nasr's remarks with a view to improving its methods of work in the future.

33. The then chairperson of the contact group, Mr. Garvalov, had submitted to the Committee a report on the group's participation in the deliberations of the sessional open-ended working group of the Commission on Human Rights, which at its last session had discussed preparations for the World Conference. Perhaps that report could be made available to Mr. Aboul-Nasr.

34. With regard to the two new candidates for membership of the contact group proposed by Mr. Aboul-Nasr, he personally would like the Committee to discuss the matter formally and informally, so that a decision could be reached by consensus.

35. Mr. RECHETOV endorsed Mr. Aboul-Nasr's views on decisions taken by the Office of the High Commissioner concerning matters of relevance to the Committee. The Committee had to operate in accordance with democratic principles based on its independence vis-à-vis Governments, but also vis-à-vis the United Nations. The High Commissioner should ensure that any decision concerning the participation of Committee members in activities like preparations for the World Conference should be taken in consultation with the Committee Chairman.

36. Ms. RAADI (Coordinator, International Conventions Team, Support Services Branch, Office of the High Commissioner for Human Rights) said that the concerns of the Committee would be duly conveyed to the High Commissioner, who would certainly take them into consideration. The High Commissioner had recently underlined the importance she attached to the Committee's participation in all activities connected with the World Conference.

37. Mr. de GOUTTES subscribed to Mr. Aboul-Nasr's proposal that the contact group's role be strengthened and that care be taken to ensure that the Committee was properly informed of its activities and the progress of its work. With regard to the appointment of new members to the contact group, he agreed with Mr. Yutzis that further consultations were necessary in order to enable all Committee members to study the matter in more detail.

38. Mr. YUTZIS said that it would be advisable to ascertain whether the report submitted by Mr. Garvalov was available, for it dealt with the contact group's participation in the activities of the sessional open-ended working group of the Commission on Human Rights, that having been its sole official task.

39. Mr. ABOUL-NASR said he was aware that a report of the contact group had been submitted to the Committee, but he was anxious to indicate to Committee members that he felt that the contact group should keep the Committee more widely and more regularly informed about its activities.

40. The CHAIRMAN said that the Committee members had held a useful exchange of views which had made it possible to underline the considerable significance they attached to the Committee's participation in activities linked to the World Conference. That discussion would also help the Committee to streamline its working methods and to continue its deliberations in a marked spirit of cooperation and friendship among its members.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Venue of the fifty-ninth session of the Committee

41. The CHAIRMAN said that the World Conference to be held in South Africa in August 2001 would have a considerable impact on the issues which the Committee dealt with under the Convention. The Committee on the Elimination of Discrimination against Women had played a central role in the organization and during the proceedings of the Fourth World Conference on Women held in Beijing in 1995. The Committee could likewise make a useful contribution to the success of the World Conference against Racism. He therefore proposed that the Committee should consider whether the fifty-ninth session scheduled for August 2001 might be held in South Africa so that its members could attend the World Conference to be held during that period in that State party.

42. He did not think that step would have substantial financial implications, but the costs would in any event have to be studied by the secretariat. Nevertheless, since there was no denying that the presence and participation of the Committee would be important for the success of the World Conference and the proper application of the Convention, the possible financial implications should not be an obstacle.

43. Mr. ABOUL-NASR warmly approved of the proposal to hold the Committee's summer session in South Africa in 2001. Any financial implications would certainly be bearable.

44. Mr. YUTZIS fully supported the Chairman's initiative, which should succeed if it received the requisite political support.

45. Mr. FALL subscribed to the Chairman's proposal. Holding a Committee session in South Africa would be highly symbolic in a country which had rid itself of apartheid. The financial implications of providing the necessary conference services for the Committee to function would have to be carefully studied.

46. Mr. de GOUTTES said he thought that the Chairman's proposal was extremely interesting since it would enable the Committee to play a significant role in the preparations for and proceedings of the World Conference. Furthermore, it would certainly be symbolic.

47. Ms. JANUARY-BARDILL heartily supported the Chairman's proposal to hold a Committee session in her country, South Africa. It was necessary to bear in mind not only financial implications, but also the considerable symbolic value of the presence on South African soil of the Committee, which had played an outstanding role in the fight against apartheid, especially since South Africa had entered a new phase of its history that was not free of acts of intolerance and xenophobia.

48. Mr. NOBEL and Mr. VALENCIA RODRIGUEZ warmly supported the Chairman's proposal.

49. Mr. SHAHI congratulated the Chairman. Would the Committee meet during the World Conference? If so, would that concurrence not have substantial financial implications?

50. The CHAIRMAN explained that the Committee would hold the first part of its session before and the second part during the World Conference. Its members would have the possibility of joining in the deliberations of the Conference through action that could be coordinated officially and informally.

51. He took it that the Committee members were unanimously in favour of further examining the possibility of holding the Committee's fifty-ninth session in South Africa in 2001 to coincide with the World Conference against Racism, provided the financial aspects and other issues raised by that proposal were studied with the Office of the High Commissioner for Human Rights.

52. It was so decided.

53. Ms. RAADI (Coordinator, International Conventions Team, Support Services Branch, Office of the High Commissioner for Human Rights) said she would inform the High Commissioner that the Committee wished to hold its August 2001 session in South Africa to coincide with the World Conference against Racism.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Twelfth periodic report of Rwanda (CERD/C/335/Add.1) (continued)

54. At the invitation of the Chairman, Mr. Kananura (Rwanda) resumed his place at the Committee table.

55. Mr. KANANURA (Rwanda) said he would first reply to the many questions that had been posed concerning the National Human Rights Commission. That body had been established in the spring of 1999 pursuant to Act No. 04/1999 of 12 March 1999, of which he had a copy that could be made available to the Committee. The Commission's independence was guaranteed under article 2 of the Act. It consisted of seven members - currently two women and five men - chosen for their skills and integrity and without any regard for ethnic origin. The chairman of the Commission, who had ministerial status, and the six other members, who each bore the title of ministry secretary-general, enjoyed immunity under article 10 of the Act. The Commission drew up its own rules of procedure, prepared its own budget and decided on how it should function. It therefore had considerable autonomy.

56. Article 4 (2) of Act No. 04/1999 empowered the Commission to institute legal proceedings when human rights were violated by anyone, including the Government.

57. After training for one short month in Strasbourg and three days at the Office of the United Nations High Commissioner for Human Rights, the Commission members had quickly begun their work, which thus far had consisted mainly of gathering information. In particular, they had held consultations with the main representatives of civil society and had visited Rwanda's 12 prefectures to make inquiries among the population and take stock of the problems. They had seized the opportunity to inform citizens, especially the most disadvantaged, of their rights. Furthermore, they were conducting a survey of prison conditions and monitored cases up to the appeal stage to ensure that the procedures were being properly followed.

58. The Commission had undertaken to fight corruption in the government and to root out maladministrators. However, since it had been in existence for only a year, it had not yet presented an annual report.

59. In answer to the questions that had been raised with respect to the administration of justice, he pointed out that in 1994 the judiciary had been wiped out and had been quite incapable of dealing with the flood of cases that had followed the genocide. Consequently, Rwanda had had to appeal for international assistance to train lawyers and judges. The Government Procurator's Office was currently assisted by 236 judicial police officers, 379 judges and 106 clerks of the court. There were also 1,084 professionals attached to the courts of appeal. Judges were fully independent and the foreigners among them had never complained about interference on the part of the political authorities. The Government's involvement was limited to the appointment of the President of the Supreme Court. However, as in many other countries, the last available remedy for persons after trial was a presidential pardon, which had never been accorded to perpetrators of the genocide because the hurt and wounds of the survivors were still too fresh to even dream of granting such a pardon.

60. The prison situation was a real challenge for the Government and the international community. In 1994 Rwanda had had 19 prisons, including nine that had been built by the Germans during the colonial era, an indication of how antiquated they were. Of course, since the genocide, the prisons had been overcrowded and the Government was trying to find ways of preparing cases for trial as quickly as possible and releasing persons who could be released. Special court divisions had been created to that end.

61. In order to speed up the process, the alleged perpetrators of the genocide had been divided into four categories, namely, instigators and organizers of the genocide, those who had given orders and supervised the massacres, those who had executed the orders, and the petty offenders who had taken advantage of the general state of panic to loot or squat on other people's property. The last two categories could be tried under the traditional justice system of the gacacas, or people's courts, to which Rwandans remained very attached. Under that system, small legal units were to be set up in each commune and justice would be administered by persons chosen by the community for their integrity and wisdom. The most serious cases could be referred to the sector or prefecture level, which would have other gacacas. The Government hoped that recourse to that system would assist in the national reconciliation process and help to empty the prisons as quickly as possible. Another initiative designed to accelerate the process of trying cases was to encourage detainees to confess to their crimes, which would help in

preparing the cases and possibly lighten the sentences of accused persons. That was a very popular measure because a total of 20,527 people had made confessions since it had been introduced.

62. The Rwandan Government had been according special treatment to detained children, especially those who had been younger than 14 when the crimes had been committed, although many of them had been trained to kill and were totally perverted. However, since they could not be held criminally responsible because of their age, those children would not be tried and instead were being sent to a re-education centre in Gitagata. Detained pregnant women also received special treatment and UNICEF was monitoring the situation to ensure that they were properly treated and fed.

63. Those efforts might seem insufficient beside the vast needs to be filled, but the Government could not afford to devote more than 1 per cent of the State budget to prisons because of all its other priorities, including caring for widows and orphans, dealing with the AIDS epidemic and addressing other equally urgent problems. The international community was very quick to criticize but had hardly been generous itself, and the assistance extended to Rwanda had often been ridiculously small compared with the gaping needs. Relying basically on its own efforts, the Government had recently taken two practical initiatives to improve the situation of prison inmates, who could now work outside the prison context, particularly in the reconstruction of homes, to help finance their upkeep. That measure was yielding excellent results and very few prisoners tried to escape. In addition, the decision had been taken to grant prisons plots of land which could be cultivated as kitchen gardens by detainees to improve their everyday fare.

64. With regard to cooperation between Rwanda and the International Criminal Tribunal for Rwanda in Arusha, it should be pointed out that from the time of its establishment in November 1994, the Tribunal had experienced an acute shortage of financial and human resources, and had come under heavy criticism for maladministration and the incompetence of some of its members, who had since been replaced. It was only in 1996, after 12 wanted genocide perpetrators had been arrested, that Rwandans had begun to recognize the value of the Tribunal's work. However, relations had become tense again following the Tribunal's decision in November 1999 to release Jean-Bosco Barayagwiza, one of the instigators of the genocide, "on technical grounds".

65. Turning to the economy, he said that Rwanda's economic situation had improved over the past five years but the trade balance was still negative.

66. With regard to policy aimed at ensuring a balance or fair distribution of Tutsis and Hutus in the State administration, he pointed out that the concept of ethnicity derived from the colonial era. Before the arrival of the colonizers, Rwandans had defined themselves according to their membership of one of the 18 existing clans. It was the colonizers who had for convenience divided the population, very inaccurately, into Hutus and Tutsis. According to current estimates, Tutsis represented 43 per cent of the population and Hutus about 55 per cent. There was much reluctance in Rwanda to reformulating policy on ethnic grounds, in view of the events that had taken place in 1994.

67. Although roadblocks had been set up to curb unrest in the north of the country in 1995 and 1996, internal security could now be said to have been restored. The population enjoyed complete freedom of movement inside the country.

68. There were currently three refugee camps: one for Burundian refugees, another for refugees from the eastern Congo, and the third for refugees from North Kivu. No Rwandans were in those camps.

69. Housing remained a problem because of population growth. The policy on housing being applied today, as in the 1960s, involved grouping the inhabitants in villages that could more easily be provided with social services. That policy also presented an advantage in terms of security. After the exodus prompted by the genocide, the first returnees had been placed in dwellings left vacant. On the return of the owners, however, the Government had had to build centres to accommodate the people whose homes had been destroyed. That was a very costly undertaking and he wished to point out that Rwanda had received hardly any aid from the international community in that connection.

70. Mr. SHAHI said he would like to know what powers were actually vested in the gacacas and whether those institutions could try murderers. He would also like to know how many people had been convicted by such courts.

71. Mr. de GOUTTES inquired whether inmates permitted to work outside a prison during the day were subjected to acts of vengeance.

72. Mr. KANANURA (Rwanda), replying to the question from Mr. Shahi, said that the gacacas were entitled to deal only with the third and fourth categories of cases he had enumerated earlier. He was unable to give any figures because those institutions had not yet begun functioning.

73. As to possible acts of vengeance against inmates leaving prison to work, it should be made clear that the prisoners were accompanied by local police officers. The Government furthermore sought to deter the public from engaging in such acts, notably by imposing severe penalties. Persons whose guilt was beyond doubt often preferred not to venture outside the prison walls. In that context, the gacacas were an exceptional tool for reconciliation of the people, as anyone acquitted by those bodies would no longer have any reason to fear for his safety.

74. Mr. NOBEL (Country Rapporteur) thanked Mr. Kananura for his frank and exhaustive replies, which had made it possible to bring the Committee's information up to date, since the report in fact dated from 1999 and the information it contained reflected the situation in 1997/1998. He noted with satisfaction that many positive developments had taken place. Rwanda's efforts to bring the perpetrators of the most serious crimes to justice and to encourage the establishment of the gacacas were to be welcomed. The Committee hoped to learn more in the next report about progress made with that new project. It should also be recognized that the international community had not responded soon enough at the time to prevent the situation in Rwanda from degenerating and that it had done little since then to help the country in its

reconstruction effort. When it drafted its concluding observations on the report, the Committee would consider the possibility of calling the attention of the international community to the situation in Rwanda.

75. The CHAIRMAN thanked the representative of Rwanda for the frankness of the dialogue. He announced that the Committee had thus concluded its consideration of the twelfth periodic report of Rwanda.

76. Mr. Kananura (Rwanda) withdrew.

The meeting rose at 1 p.m.

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Fifty-sixth session

SUMMARY RECORD OF THE 1387th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 March 2000, at 3 p.m.

Chairman: Mr. SHERIFIS

later: Mr. FALL (Vice-Chairman)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Initial to fourth periodic reports of Estonia (CERD/C/329/Add.2; HRI/CORE/1/Add.50)

1. At the invitation of the Chairman, Ms. Jaani, Mr. Kull, Ms. Rennel, Mr. Kokk, Ms. Pihel, Ms. Hion and Ms. Kokajev (Estonia) took places at the Committee table.

2. Ms. JAANI (Estonia) apologised for the late submission of the consolidated initial to fourth reports of Estonia. Following the restoration of independence in 1991, many complex changes had taken place and Estonia continued to work towards full compliance with its international obligations. It had also continued accession negotiations with the European Union, with which new levels of cooperation were being achieved.

3 At the national level, general elections and elections to local government councils had been held. As a result, seven political parties, including the predominantly Russian-speaking Estonian United People's Party, were represented in parliament. Following local government elections, in which resident foreigners had had the right to vote, two electoral lists composed largely of Russian-speaking politicians were represented on Tallinn's city council. One of the lists was part of the ruling coalition and included one of the vice-chairmen of the city council. Two out of eight of the city's districts were governed by non-Estonians.

4. One of the country's major challenges was the integration of the sizeable non-Estonian community into Estonian society. That was to be achieved through a consistent, inclusive policy based on the State Integration Programme. The latter sought to reduce the number of persons with undetermined citizenship, to promote the teaching of the official language and to encourage real participation of non-Estonians in Estonian society. It was based on the development of an integrated European society, stability and the protection and continued development of Estonian culture. The purpose of integration was not to change ethnic identity but rather to help non-Estonians adapt to Estonian culture and participate fully in Estonian society.

5. The draft programme "Integration in Estonian society 2000-2007" defined the nature and main aims of integration. The nature of integration was shaped by two processes: on the one hand social harmonization based on knowledge of the Estonian language and possession of Estonian citizenship, and on the other hand recognition of the cultural rights of ethnic minorities. Harmonization therefore required the integration of both Estonians and non-Estonians into an Estonian society built around a strong common core.

6. Integration had three main objectives. First, since insufficient knowledge of the Estonian language was a barrier to many non-Estonians, a shared Estonian language environment would be created in parallel with the creation of favourable conditions for the development of the languages and cultures of ethnic minorities. Second, in order to facilitate the integration of non-Estonians, the naturalization process would be made more efficient and effective so that new Estonian citizens of non-Estonian descent could participate equally in the structures of legislative and executive power. Third, in order to eliminate ethnic discrimination, a multicultural society

based on cultural pluralism, a strong common core and the development of Estonian culture would be created. In addition, the Government, along with the European Union, United Nations Development Programme (UNDP) and the Nordic countries, provided financial support for various activities promoting integration.

7. The new Legal Chancellor Act, which had entered into force on 1 June 1999, had considerably broadened the Legal Chancellor's mandate, adding the functions of Ombudsman. As a result, individuals could appeal directly to the Legal Chancellor to intervene on their behalf with any State agency in order to protect their constitutional rights and freedoms. He was authorized to take any measures necessary in the interest of a just and prompt settlement and had unrestricted access to all documents and materials. The Legal Chancellor kept petitioners informed of the results of his investigations and any proposals made. Any agency receiving a proposal from the Legal Chancellor had to notify the Legal Chancellor of any steps taken to comply. In the event of non-compliance, the Legal Chancellor could present a report to the agency's supervisory body, to the Government or to the Parliament. He also had the right to request disciplinary action against an official. In cases where the Legal Chancellor found that the Constitution or the law had been violated, he had to notify the appropriate authorities. Although the Act was relatively recent, the number of petitions had risen from 289 in 1995 to 716 in 1999, which seemed to indicate that the system was working satisfactorily.

8. Individuals also had the right, under article 15 of the Constitution, to challenge the constitutionality of any law and the Supreme Court had in fact declared unconstitutional certain legal acts which were not in conformity with the Constitution and relevant international treaties. In addition, a new law on administrative procedure, which had taken effect on 1 January 2000, gave the administrative court the power to revoke disputed acts or procedures, either in their entirety or partially, as well as the right to order an administrative body or official to pay compensation for damages caused.

9. She expressed the hope that the additional information provided in her oral presentation would assist the Committee in its deliberations on Estonia and said she would be ready to answer any questions the Committee might wish to ask.

10. Mr. YUTZIS (Country Rapporteur) said that it was always a pleasure to receive the first report from a State party, since it represented an added element in the developing dialogue between the Committee and States. He thanked the representative of Estonia for the additional information provided on efforts to achieve integration and on the increased responsibilities of the Legal Chancellor. He noted that Estonia was making admirable progress in its efforts to transform the social and political situation in the country.

11. Referring to the report, he noted that Estonia had been unable to regain its independence after the Second World War (para. 17) and that there were many ethnic groups living in Estonia (para. 36). Most of the Roma population, however, had regrettably been killed during the German occupation (para. 38). It was noteworthy that during her oral presentation, the representative of Estonia had recognized that Estonia was a multicultural society, a fact not yet officially recognized in the Constitution, and the demographic information provided in the report would contribute to ensuring implementation of the Convention. In that context, he noted that international treaties took precedence over national legislation (para. 55) and could be invoked

before the courts (para. 58). In that respect, Estonia should, as recommended by the European Commission against Racism and Intolerance (ECRI), ratify the International Labour Organization (ILO) Convention No. 111 Concerning discrimination in respect of Employment and Occupation, the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education and the European Charter for Regional or Minority Languages as soon as possible.

12. With regard to articles 3 and 4 of the Convention, the Criminal Code currently contained provisions which implemented those two articles (paras. 83 to 91). However, as the European Commission against Racism and Intolerance (ECRI) had pointed out, no civil or administrative measures had been taken to eliminate racial discrimination in the areas of housing and employment. It was urgent that such measures be taken rapidly in order fully to implement the Convention.

13. A recurrent theme in the report was that of cultural autonomy. The report stated that national minorities had the right to preserve their identity, culture and language (para. 66), but defined a national minority as citizens of Estonia residing on Estonian territory. If indeed representatives of a national minority had to be citizens in order to be recognized, that was an unacceptable restriction. He wondered how that definition could be reconciled with the main objective of Estonia's cultural policy, which included the cultural autonomy of national minorities (para. 387) but which would seem to give greater weight to Estonian national culture.

14. With regard to immigration, the report stated (para. 136) that the Aliens Act established an annual immigration quota of 0.05 per cent of the total population, but that quota did not apply to Estonians or to citizens of the European Union, Norway, Iceland and Switzerland. In addition, during her oral presentation, the representative of Estonia had stated that the country was intending to develop a European, integrated society. The restrictions on immigration contained in the Aliens Act were discriminatory and not compatible with the Convention and he wondered whether the delegation would be able to offer some explanation.

15. In the area of citizenship (paras. 144 to 160) the extensive requirements for citizenship were a source of concern, as had already been pointed out by the ECRI. Especially onerous was the requirement of command of the Estonian language, which was a particularly difficult language to master.

16. Language was also an impediment to obtaining employment. Pursuant to the Employment Contracts Act, language skills were necessary for work (para. 252); that meant that employers could set a language requirement for job-seekers. As there was a large number of Russian-speakers in Estonia who did not know Estonian, such a provision was indirectly discriminatory. The report openly acknowledged that language affected employment (para. 272). With the decline in the size of Estonia's industrial sector and the growth of its services sector, language proficiency became even more important.

17. Education was another area of concern that was linked to the issue of language. It was worth noting that in a report on Estonia, the Council of Europe's (ECRI) had urged Estonia to

reconsider its plan (alluded to in paragraphs 342 and 343 of the report) for all secondary schools to be taught in Estonian by the year 2007 because of the large number of Russian-speakers resident in Estonia.

18. Turning to the question of stateless persons, paragraph 140 (a), which said that an alien's passport might be issued to an alien who had been declared a stateless person if he or she was entitled to a residence permit and had no valid travel document, raised an important issue, since there were nearly 200,000 stateless persons living in Estonia. The situation of children born of stateless persons in Estonia was particularly disturbing, because they were automatically declared stateless at birth. As he understood it, a bill had been submitted to address that problem. He asked the delegation of Estonia for additional information on the matter.

19. Concerning the references in paragraph 401 to freedom of the press, he inquired what was being done to make Russian-language television and cable channels available. That was important for the pursuit of cultural identity. What was Estonia doing to ensure that the Russian-speaking community had access to modern technology for cable, video and television?

20. Mr. Fall, Vice-Chairman, took the Chair.

21. Mr. DIACONU was pleased to note that under Estonia's Constitution, international conventions took precedence over domestic law and that the provisions of the Convention were directly applicable.

22. He had a question about paragraph 87. Why did genocide include deprivation or restriction of the economic, political and social human rights of native inhabitants only during occupation or annexation? If such offences were committed prior to or subsequent to occupation or annexation, would they not constitute acts of genocide? The 1948 Convention on the Prevention and Punishment of the Crime of Genocide established that punishment of such acts was not restricted to wartime, occupation or annexation. The wording of paragraph 87 gave the impression that a limitation was placed on the scope of the Genocide Convention; he could not imagine that that was Estonia's intention.

23. He would like to know how many non-citizens were permanent residents and how many were not. How many non-citizens had received a non-citizen passport? After all, such a passport was essential to the enjoyment of freedom of movement and the right to leave a country and return to it.

24. He was surprised to read in paragraph 64 that article 52 (2) of the Estonian Constitution entitled national minorities who formed the majority of the residents in a locality to use their own language for internal communication. Why were they allowed to do so only for internal communication? Were they not allowed to use their own language in their dealings with the authorities? As it stood, paragraph 64 was misleading: should the Committee infer that in areas where such persons were in the minority they were not even allowed to use their own language among themselves?

25. The Estonian Government had given a definition of the term "minority" (para. 66), something which very few states did. Why were only citizens considered minorities, and not

others? That was in contradiction with the Human Rights Committee's definition of minority. Moreover, the definition given in paragraph 66 appeared to be inconsistent with the way the term was used in paragraph 44, which referred to 474,834 Russians as being part of the Russian minority, even those who did not have Estonian nationality. If only citizens were considered part of the national minority, that meant that only about 200,000 of those Russian-speakers would be regarded as belonging to the minority and could thus enjoy cultural autonomy under the Cultural Autonomy Act. Also, how should the reference in the definition to "a long and lasting attachment to the country" be interpreted? How many years did that entail?

26. He was pleased that the teaching of Estonian had been made mandatory in all schools: it was essential for anyone who lived in the country to know the language. However, why was it planned to replace non-Estonian-language education by Estonian-language education in 2007/2008 (para. 75)? Did that mean that other languages would be eliminated? Why could Estonian not be added? He understood very well that the main language used was Estonian, but it should also continue to be possible to be taught in the minority languages.

27. According to paragraph 108, Estonians had the right of access to personal data stored at surveillance agencies and in their archives, but citizens of foreign countries and stateless persons did not. He could not imagine that the Human Rights Committee could accept that such a distinction was made between citizens and non-citizens.

28. Paragraph 117 contained a requirement of language proficiency in Estonian in order to run for office at local level. He referred to the conclusions of Max van der Stoel, the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe (OSCE), for whom such a regulation constituted discrimination against a certain group of citizens. According to the Estonian Constitution itself, no one could be discriminated against on the basis of language (para. 62). The Estonian Government must give serious consideration to eliminating discrimination against some of its citizens.

29. He noted the importance of the National Minorities Cultural Autonomy Act (para. 389) and was pleased that it was possible for members of minority groups to pursue cultural activities and have cultural institutions and even Sunday schools (paras. 344-50).

30. He was optimistic for the future implementation of the Convention in Estonia. There was an integration programme, which, as the delegation of Estonia had stressed, must be implemented with due regard for ethnic differences. To that end, Estonia must continue its efforts to reduce the number of non-citizens and of persons who do not have the status of permanent resident and do away, as much as possible, with legal differences between citizens and permanent residents.

31. Mr. VALENCIA RODRIGUEZ, commenting first on the part of the report dealing with implementation of article 2 of the Convention, said that he was pleased to note that article 12 of the Estonian Constitution prohibited racial discrimination and that article 49 guaranteed everyone's right to preserve his or her national identity. It was to be welcomed that the National Minorities Cultural Autonomy Act (para. 66), passed in 1993, was consistent with the first Law

on Cultural Autonomy for National Minorities of 1925, which, as stated in paragraph 65, had been recognized internationally as a successful endeavour to protect the cultural autonomy of minorities.

32. He welcomed the efforts made to integrate the non-Estonian-speaking population into Estonian society. The establishment in 1998 of the Non-Estonians' Integration Foundation had been a wise decision (para. 71). He asked the Estonian delegation to provide more information on the success of programmes to teach the Estonian language and on the results of the State Integration Programme (para. 70).

33. Estonia complied with the fundamental aspects of article 4 of the Convention. With regard to paragraph 98, on the Criminal Procedure Code, he requested information on criminal cases in recent years in which the right of equality before the law, regardless of race, had been violated.

34. The report provided quite complete information on Estonia's implementation of article 5 of the Convention. He noted that Estonia had abolished the death penalty (para. 105) and that foreigners had been granted the right to vote in local elections if they fulfilled certain conditions. That initiative encouraged the integration process.

35. Returning to an issue raised earlier, he noted that the immigration quota established annually under the Aliens Act did not apply to citizens of the European Union, Norway, Iceland and Switzerland (para. 136). That clearly constituted discrimination on the basis of national origin. Could the Estonian delegation comment on that point?

36. According to paragraph 179 of the report, the transfer of land to a foreigner was subject to the approval of the local governor. He presumed that such a restriction applied to all foreigners. Nevertheless, paragraph 205 of the report stated that there were no restrictions on the basis of citizenship with regard to the right to succession. He would welcome some explanation in that regard.

37. Concerning labour issues, he noted that under Section 5 of the Wages Act it was prohibited to increase or reduce wages on the grounds of an employee's racial or ethnic origin. How was that provision applied to women in the light of the principle of equal pay for equal work? Furthermore, since unemployment was generally higher among men than women, what steps were being taken to remedy the situation?

38. Given that one of the major factors impeding the integration of non-Estonians was their difficulty in mastering the Estonian language, it would be interesting to know the results of programmes implemented in that connection. With regard to education, he welcomed the establishment of special schools with teaching in the Russian, Ukrainian and Yiddish languages, but recommended that steps also be taken to set up schools for other minority groups. The Estonian Government was to be commended on including human rights education in the national school curriculum. Also praiseworthy were the activities of the Press Council, which he hoped to take due account of Estonia's obligations under the provisions of the Covenant.

39. Mr. de GOUTTES said that a State party's initial report was always of great interest to the Committee and that there was much to be commended in the report submitted by Estonia: sufficient information on the ethnic composition of the population; details of mechanisms in place to protect minority groups; the precedence of international treaties over domestic legislation; ample provision in the Criminal Code for the prevention of racial discrimination; specific examples of legal action taken on the grounds of racial discrimination. Nonetheless, he would welcome further information on the following matters.

40. According to the Committee's NGO sources, including ECRI, members of the Russian-speaking minority in Estonia were the victims of discrimination with respect to elections, the granting of nationality and in socio-economic and cultural spheres. What steps were being taken to remedy the situation? In that connection, was it possible for the annual immigration quota, referred to in paragraph 136 of the report, to be altered, for example by the Estonian Parliament? Could any countries other than those listed in paragraph 136 be exempted from the quota? Approximately how many applications for immigration were rejected each year on account of the quota?

41. According to paragraph 243 of the report, the Non-profit Associations Act prohibited the activities of associations that incited ethnic, racial, religious or political hatred, violence or discrimination. Could the delegation provide any examples of sanctions taken against such associations on the basis of the Act? He would also be interested to know more about the Press Council and whether, as a result of its monitoring activities, any sanctions had been taken against newspapers on the grounds of incitement to racial discrimination.

42. With which NGOs did the Estonian Government cooperate in the field of human rights education?

43. Did the Government envisage the possibility of making the declaration under article 14 of the Covenant? It was worth noting that there was no incompatibility between it and article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The two complaints procedures under those articles were in fact complementary, the former being universal and the latter regional in scope.

44. Mr. PILLAI welcomed the many very liberal provisions in the Estonian Constitution, in particular article 123 whereby international treaties took precedence over domestic legislation. It was indeed to its credit that Estonia had already become a party to so many international agreements, given its very recent independence.

45. He was particularly interested in information provided by the delegation during its presentation on the Government's considerable efforts towards the integration of the different ethnic groups into Estonian society, to which there were many references in the report (paras. 67, 75, 78). He wondered how the Government's efforts to ensure integration on the one hand, and to allow minority groups to preserve their linguistic and cultural identity on the other, inter alia through the National Minorities Cultural Autonomy Act, could be reconciled.

46. He sought further details on the role and activities of the Estonian Union of National Minorities, referred to in paragraph 399 of the report, as well as on NGOs active in Estonia in the field of racial discrimination.

47. Mr. RECHETOV said that although Estonia was a newly independent State, it had already considerable experience in human rights - especially in national minorities, through its association with the European human rights bodies. The time had now come for it to fulfil its obligations at international level, although it would have been more appropriate if it had done so first of all under the Convention Against the Elimination of Racial Discrimination, rather than in connection with the Covenant on Civil and Political Rights, given that most of the issues at stake in Estonia came under the sphere of competence of the Convention.

48. Historians might well dispute some of the historical information provided in the first part of the report, notably that in paragraphs 14 and 15. It was clear from the somewhat one-sided view of historical events presented in the report that the Estonian Government had decided to make a special issue of its history, which determined its policy towards national minorities. For instance, the last sentence of paragraph 38 of the report merely stated that the Roma were also represented in Estonia to a certain degree and that the majority of them had lost their lives during the German occupation. In view of the great interest in the situation of Roma people nowadays, some effort ought to have been made to provide more accurate information in the report on that score.

49. It was indeed highly regrettable that, owing to the particular circumstances of the former Soviet Union, the many Russian-speakers among the population had never been encouraged or helped to learn Estonian. However, following the dissolution of the former Soviet Union, many of them had suddenly found themselves deprived of citizenship, which ran counter to the Universal Declaration of Human Rights. What was more, not only was the enjoyment of most basic rights contingent on Estonian citizenship, but only Estonian citizens could be considered as belonging to the recognized national minorities. According to paragraph 94 of the report, the Courts Act provided that citizens should have the right to protection by the courts if their life, health, personal liberty, property, honour and dignity or other rights and liberties guaranteed by the Constitution were violated. That implied that non-citizens were not entitled to such protection. Furthermore, from the information contained in paragraph 186 (a), it appeared that only Estonian citizens were allowed to possess rifles, which was bad news for foreigners wishing to visit Estonia on hunting trips. He would welcome some clarification on those two points.

50. He reckoned that the vast majority of ethnic Russians living in Estonia had welcomed its independence and would like to acquire Estonian citizenship, but they were obliged to undergo the very lengthy and restrictive procedures of the immigration quota system. According to figures available, in the last five years the number of people naturalized under such procedures had fallen by around 75 per cent. The report failed to mention that Estonian courts had declared the quota system unconstitutional and had found it to be in violation of the European Convention on Human Rights. The quota system had also been condemned by the OSCE High Commissioner on National Minorities. How could the problem of stateless people in Estonia be resolved when reportedly the immigration quota system was likely to become even stricter in future?

51. He, too, sought clarification regarding the statement in paragraph 87, which suggested that acts resulting in the deprivation or restriction of economic, political, social and human rights of native inhabitants unless perpetrated during times of occupation or annexation were not considered as crimes against humanity under the relevant provisions of the Criminal Code.

52. In conclusion, after reassuring the Estonian delegation that it was not the only State party to have been subjected to such frank and tough questioning, he suggested that the best way for the Estonian Government to pursue cooperation with the Committee in future would simply be to comply with its obligations under the Convention.

53. Mr. NOBEL asked whether the Citizenship and Immigration Board (para. 79) was now fully equipped and staffed. He shared the concerns expressed by previous speakers about the immigration quota system, which effectively restricted the numbers of applicants from countries outside the European Union to several hundred each year. He was familiar with the immigration policies promoted by the European Union and he feared the methods adopted in its efforts to restrict and control immigration as well as their consequences. For by restricting immigration from countries outside the European Union it was implied that citizens from other countries were not welcome. It nurtured a "them" and "us" mentality, which could inspire xenophobic and racist tendencies, not only among the public at large, but also among law enforcement and immigration officers in the countries concerned. He therefore suggested that the Estonian Government should reconsider its current immigration policies. He strongly disliked the current provision regarding the annual immigration quota in the Aliens Act.

54. In 1997, Estonia had ratified the Convention relating to the Status of Refugees and its 1967 protocol. Estonia's Nordic neighbours had been particularly keen for it to ratify the instrument, since the many people transiting through Estonia to seek refuge or asylum in their countries could thereafter be returned to Estonia on the grounds that it was the country of first asylum. Prior to that ratification, he had been working with the Swedish Red Cross in the region and was aware there had been several hundreds of refugees that fell into that category. He was therefore rather surprised to see that according to paragraph 162 of the report, as at 23 December 1998 only 24 such persons had applied for refugee status. What had happened to all the rest? Of course most safety seekers were not covered by the current definition of refugees given under the 1951 Convention, since generally they were fleeing from armed conflicts or natural disasters. However, such situations were so serious that, on purely humanitarian grounds, it would be difficult to justify returning such persons to their homeland. Could the discrepancy in the figures he had quoted be explained by the fact that the persons concerned, who did not come under the definition of refugees in the Convention, had in fact been allowed to stay on humanitarian grounds?

55. Had the Estonian Government considered the possibility of ratifying the Convention relating to the Status of Stateless Persons as well as the Convention on the Reduction of Statelessness. That might help to resolve the problem of stateless persons, both for the Estonian Government and the persons concerned.

56. Mr. BRYDE commended the State party on the submission of an impressive and informative report. The main concern for many members of the Committee was the situation of

the Russian minority. Of course, the report could only be considered in the light of Estonia's history, especially in so far as the relationship between citizens and non-citizens was concerned. The use of the term "alien" to describe persons who had been born and legally resided in the country while it was part of the Soviet Union was unsatisfactory. Were it not for the qualification of such persons as aliens, the country's policy toward non-citizens, which for instance allowed for participation in local elections, would seem quite progressive and commendable in comparison with the policies applied by other countries. Similarly, the Citizenship Act would not appear to be excessively restrictive if it applied only to newly arrived immigrants. But when applied to the minority in question, i.e., Russians born in Estonia, the Act deprived members of that minority of many rights under the Convention.

57. He agreed with Mr. Diaconu that the language requirements in the Election Act were a matter of concern, as they appeared to be incompatible both with the Estonian Constitution and with the Convention.

58. The members of the delegation of Estonia withdrew.

Draft concluding observations concerning the twelfth to fourteenth periodic reports of France (CERD/C/56/Misc.20/Rev.3)

59. The CHAIRMAN invited the Committee to consider the draft concluding observations concerning the twelfth to fourteenth periodic reports of France.

60. Mr. ABOUL-NASR said that before the Committee examined the draft concluding observations paragraph by paragraph, he wished to express his concern that in drafting such documents, it should pay more attention to the oral presentations made by the delegations of the States parties. In 1999 the Committee had received a letter from the Mauritanian Government objecting to the way in which its report had been handled and pointing out that many of the issues raised in the concluding observations had been addressed during its delegation's oral presentation. While the oral presentations were recapitulated in the summary records, those records were not annexed to the concluding observations, and many of the readers of the latter would not be able readily to refer to them. In the case of France and of any country which sent a delegation to present its report, he hoped the Committee would take into consideration the answers provided orally. It was in the best interest of ensuring a constructive spirit of dialogue, which was of paramount importance to the Committee's work.

61. Mr. SHAHI agreed. The periodic reports were sometimes up to two years old by the time they were presented, and in such cases many of the points raised in the concluding observations could only be addressed by the State party in the oral presentation. The summary records were not immediately available.

62. Mr. RECHETOV felt that it was late in the day to begin such general discussions. The drafting of concluding observations was a complex process, and the Committee members must work together to assist the Country Rapporteur in his task by offering their comments on the proposed text.

63. Mr. DIACONU said he agreed with the substance of the concluding observations, but felt the repeated reference in four paragraphs to the recommendations issued by the Committee in 1994 gave the false impression that France had not responded to those recommendations and that no dialogue had taken place in the interim.

64. Mr. BANTON (Country Rapporteur) said that in his view, the delegation had failed in both its report and its oral presentation to respond to certain specific questions, and had ignored the recommendations issued by the Committee in 1994, to which the draft concluding observations referred. The repetition was intentional, and was appropriate in the case of France. He proposed to meet Mr. Diaconu after the meeting to discuss the four paragraphs in question.

65. It was so agreed.

Paragraph 1

66. Mr. PILLAI suggested the Committee might consider inserting the dates when the twelfth and thirteenth reports had fallen due, so as to lend weight to the references to late submission of reports in subsequent paragraphs.

67. Mr. RECHETOV said that while that proposal was of interest, if the Committee decided to include such information in the first paragraph of its concluding observations for France, it would have to instruct the Secretariat to do so in the concluding observations for all countries. Failing that, it might be perceived as a reproach targeted against France.

68. Mr. SHAHI felt that the reference in paragraph 2 to the deadline for the submission of the twelfth periodic report would suffice.

69. It was so agreed.

70. Paragraph 1 was adopted.

Paragraph 2

71. Mrs. ZOU Deci felt that the last sentence lent itself to confusion, as it pointed out that the twelfth report had been due in 1994. That might imply that France had not submitted a report in 1994, when in fact it had submitted one that year. The sentence should be deleted.

72. After a discussion in which Mr. BANTON, Mr. ABOUL-NASR, Mr. SHAHI and Mrs. JANUARY-BARDILL took part, it was decided to leave the question in abeyance pending further consultation among the Committee members.

Paragraph 3

73. Paragraph 3 was adopted.

Paragraph 4

74. Paragraph 4 was adopted.

Paragraph 5

75. Mr. RECHETOV and Mr. ABOUL-NASR felt that the sentence was too categorical. The Committee should insert "in some instances" before the words "with vigour".

76. Mr. DIACONU suggested that the words "with satisfaction" should be removed.

77. Mr. BANTON (Country Rapporteur) agreed that "with satisfaction" should be removed, and suggested using another term instead of "in some instances". He had the impression that the Government took such action in the overwhelming majority of such cases.

78. Mr. BRYDE proposed that the Committee use the term "systematically".

79. Paragraph 5, as amended, was adopted.

The meeting rose at 6 p.m.

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International Convention on the Elimination of all Forms of Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1388th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 17 March 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Initial, second, third and fourth periodic reports of Estonia (continued)

ORGANIZATIONAL AND OTHER MATTERS (continued)

Venue of the fifty-ninth session of the Committee (continued)

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1388/Add/1.

This record is subject to correction.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Initial, second, third and fourth periodic reports of Estonia (CERD/C/329/Add.2) (continued)

1. At the invitation of the Chairman, the members of the delegation of Estonia resumed their places at the Committee table.

2. The CHAIRMAN invited the delegation of Estonia to reply to the questions raised by the Committee members at the preceding meeting.

3. Ms. JAANI (Estonia) said that her delegation was very grateful to the Committee for its various comments, even though they had sometimes referred to issues not directly covered by the Convention. She and her colleagues would try to reply as fully as possible to the questions asked.

4. Mr. KOKK (Estonia), in response to a question about the definition of national minorities, said that the definition given by Estonia, which applied to Estonian citizens residing in Estonia, was the same as that adopted by several other European countries. The reference to citizenship was not at all unusual. He invited members of the Committee to refer to paragraph 50 of the second progress report on the protection of minorities (E/CN.4/Sub.2/1992/37), in which the author quoted the definition of minorities given in Francesco Capotorti's Study on Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities. The definition included the word "national". All the same, non-Estonian nationals residing in Estonia enjoyed the same rights as Estonians except for the right to vote or stand for elective office; they could still vote or stand for election to the boards of non-governmental organizations (NGOs). While it was true that Estonian citizens and non-Estonians were listed in different electoral registers, that was not for discriminatory purposes, but simply for practical reasons, owing to the fact that aliens were not eligible to vote in general elections.

5. Members of national minorities with Estonian citizenship who wished to stand for political office must, in accordance with the Election Act, have sufficient knowledge of the Estonian language to be able to carry out their functions properly. There was also a basic language requirement for obtaining Estonian nationality; the same rule applied in other European countries and was non-discriminatory. The required standard was not beyond the capabilities of the average candidate, since 90 per cent of those taking the language examination passed. Furthermore, the costs of language courses taken by candidates were refundable.

6. Contrary to suggestions made during the discussion, filiation was not the only basis on which Estonian nationality could be acquired. He invited members of the Committee to refer to paragraphs 149 (c), 150, 151 and 152 of the report, which concerned the naturalization of minors or aliens who had long been residents of Estonia.

7. The distinction between Estonian citizens and aliens in the Weapons Act of 1995 concerning the purchase and possession of firearms was made for national security reasons. It was natural for additional conditions to be attached for persons holding only a temporary residence permit. It was also for reasons of national security that restrictions applied to aliens wishing to acquire land or other immovable property in Estonia. Operations of that nature were subject to authorization from local or central Government. Similar restrictions existed in other countries such as Bulgaria, Croatia, Romania, Slovenia, etc.

8. In reply to Mr. Nobel's question, he said that asylum-seekers often came initially to Estonia in the hope of emigrating subsequently to the Scandinavian countries, where the standard of living was higher. Nevertheless, statistics showed that there were very few cases of "illegal immigrants". In fact, the "immigration quotas" referred to the number of residence or work permits issued to aliens during any given period. A high degree of flexibility was exercised in applying the quotas and the Government could, if need be, make exceptions or provide special dispensations.

9. Referring to Mr. de Gouttes' request for clarification regarding the Press Council, he indicated that the Council had been created in 1997 by journalists' associations themselves, in order to promote the ethics of the profession and to settle any disputes that might arise. It was independent and directly financed by members' subscriptions. The Estonian delegation would give more details on the issue in its next report.

10. Ms. RENNEL (Estonia), replying to questions concerning the access of minorities to the media, said that access was guaranteed expressly by law. Estonia applied a liberal policy regarding the print media: no authorization was required to set up a newspaper and the Russian-speaking population, the largest minority in the country, had the choice between 15 different newspapers. The Government even granted subsidies for the publishing of minority periodical publications.

11. The State did not interfere with the planning of radio or television programmes for minority groups. Public as well as private television channels broadcast programmes in Russian, since a large proportion of the non-Estonian population were not proficient in Estonian but did speak Russian. *Raadio 4* also offered programmes in other minority languages such as Ukrainian, Belarusian and Armenian, and there was a one-hour programme every month for the Jewish minority.

12. A daily Russian news programme was offered by the private television station TV1, and special longer programmes in minority languages were broadcast regularly on weekends by ETV and *Kanal 2*.

13. With regard to the use of minority languages, the way in which paragraph 64 of the report had been drafted might have caused some confusion. In fact, everybody had the right to use his or her minority language freely in personal communications, in private or in public, orally and in writing. The State did not interfere with that right in any way except for relations with public authorities. Pursuant to article 51 of the Constitution, everyone had to address State agencies and their officials in Estonian and replies would also be in Estonian. Nevertheless, in localities where at least half of the permanent residents belonged to a minority, it was also possible to use

the language of that minority in communications with public authorities. Where the language of the majority of residents was not Estonian, local governments could use the main language spoken in the area as an internal working language. In practice, those provisions were used in several north-eastern towns, where the majority of the population was of Russian origin.

14. As to the possibility of receiving an education in a minority language, there had been two main types of school in Estonia during the Soviet occupation, each with a different curricula: Estonian-language schools, which also taught Russian, and Russian-language schools, which were usually monolingual. After regaining independence in 1991, Estonia had set out to create a uniform system for everybody, regardless of ethnic origin. It was still possible to receive education in Russian from nursery to secondary school, as well as in some vocational schools and universities. However, in accordance with the Basic and Upper Secondary Schools Act, by the year 2007, all graduates of non-Estonian-language basic schools should have sufficient knowledge of Estonian to enable them to continue their studies in Estonian. That did not mean that, in 2007, all establishments offering education in a language other than Estonian would be closed down. The relevant provisions applied only to secondary schools in the State sector; they did not affect either primary and basic schools or private establishments. Furthermore, the year 2007 was not a deadline, but would mark the beginning of a transitional period, during which schools with the necessary capability would have the option of providing education in Estonian, in one or more subjects or for the whole of the programme. The conversion would be progressive and, above all, voluntary. As paragraph 77 of the report explained, final examinations would take place in both languages, while State examinations would be in Estonian only, in order to facilitate both the integration of school leavers into the employment market and the acquisition of Estonian citizenship.

15. Members of the Committee who wished to have more information on the educational system could refer to the report submitted by Estonia to the Council of Europe at the end of 1999 under the Framework Convention for the Protection of National Minorities.

16. Referring to activities carried out by the Estonian Government to facilitate the integration of minorities, she said that the most important measure in that regard had been the opening, in September 1999, of an office of the Ministry for Population and Ethnic Affairs in the north-eastern town of Jõhvi. The office had a coordinating function and played an active role in implementing government policies in the region. One of its main tasks was to foster cooperation between the Ministry and organizations, cultural associations and other NGOs representing different ethnic groups.

17. Lastly, she thanked Mr. Valencia Rodriguez for his kind words on the Integration Foundation, of which she was a member herself. It was a non-profit-making organization that aimed to launch and facilitate various projects related to the integration of non-Estonians into Estonian society. It was working actively and effectively and was very popular with NGOs and individuals active in the field of integration. Members of the Committee who wished to have more details of its activities should request them from the Estonian delegation.

18. Ms. HION (Estonia), returning to the issue of linguistic proficiency, pointed out that, under article 10 of the Employment Contracts Act, it was illegal to give preferences or to restrict rights on the grounds of sex, ethnicity, colour, race or mother tongue. In fact, language

requirements in the field of employment were only allowed if the ability to use that language was of crucial importance in order to carry out the work. In practice, proficiency in several languages was sometimes rewarded by a salary increase (which nevertheless did not exceed a specified limit). Civil servants, for instance, by virtue of the Public Service Act, were entitled to wage bonuses related to their knowledge of foreign languages.

19. Regarding equality between men and women in the employment sphere, she said that the Wages Act made it illegal to increase or reduce wages on the grounds of an employee's sex or marital status. While that meant equal wage treatment for men and women guaranteed by law, the Government had also begun to implement a strategy to extend equality to other areas. A draft amendment to the Government of the Republic Act, currently under discussion in Parliament, provided for the creation of a special unit for the promotion of equality, as part of the Ministry of Social Affairs.

20. More information concerning equal treatment of men and women would be available in the report that Estonia was currently preparing under the Convention on the Elimination of All Forms of Discrimination against Women.

21. Referring to the issue of equality before the law, she said that the Constitution guaranteed the right to equality to non-nationals as well as to Estonian citizens, and that the local authorities as well as the legislative, executive and judicial powers were responsible for ensuring that it was respected. She referred back to information provided in the report concerning the possibilities of recourse to the courts, including Civil Procedure, Criminal Procedure and Constitutional Review Court Procedure. Since international treaty provisions, and in the present case the provisions of the Convention, were directly applicable in Estonia, the Supreme Court had declared some laws void on the grounds that they were inconsistent with the principle of equal treatment. Every person also had the right to file a petition with the Legal Chancellor, who acted as a mediator, to review the activities of State bodies and ensure that the people's rights and freedoms were respected. The possibilities offered by those mechanisms guaranteed the effective protection of the rights and freedoms of all persons residing in Estonia.

22. With regard to application of article 72 of the Criminal Code, few criminal proceedings took place under its provisions, but legal precedents existed nonetheless. In December 1999, for instance, the Supreme Court had confirmed the verdict of an appeal court, finding against an individual who had distributed newspapers containing incitement to hatred, violence and racial discrimination.

23. Replying to a question from Mr. Diaconu concerning section 611 of the Criminal Code, she confirmed that the article applied to all crimes against humanity, whether committed in time of peace, war or occupation. The text was based directly on international law provisions defining crimes against humanity, including genocide, so that interpretations of the article could refer to the relevant international instruments. Since Estonia was a party to the Convention on the Prevention and Punishment of the Crime of Genocide, the amendments to the Criminal Code made in 1994 had reflected the principles contained in that Convention.

24. Ms. JAANI (Estonia), replying to another question from Mr. Diaconu, said that around 140,000 residence permits had been granted to non-nationals. The statistics concerning the number of passports issued to non-nationals - nearly 700,000 - were not relevant, since passports were valid for a compartatively short period and were renewed frequently.

25. In order to make the Citizenship and Immigration Board more user-friendly, staffing levels had been increased considerably and office opening hours extended.

26. The Estonian Union of National Minorities, referred to in paragraph 399 of the report, had been very active in protecting the rights of minorities over the previous few years, as had the Union of National Cultural Associations, which had been organizing seminars, exhibitions and cultural festivals since its creation in 1997. The Estonian Union had also established a legal aid centre, a political club, and a centre for information and publications.

27. There were over 20 NGOs officially active in the human rights field, of which the best known were the Estonian Human Rights Institute, the Legal Information Centre for Human Rights and the Jaan Tõnisson Institute, which were described in paragraphs 391-395 of the report. Those independent organizations had been asked for assistance on various occasions by State bodies and had the opportunity to express their views on programmes planned by the Government. They monitored Estonian domestic and foreign policy to make sure that it remained consistent with international obligations. The Legal Information Centre for Human Rights had been created in 1994 as an independent initiative to promote human rights awareness in Estonian society. It offered free legal advice and collected, analysed and distributed information on human rights. The Jaan Tõnisson Institute was more active in the spheres of research and training as means to promote the development of democracy in civil society. It organized workshops, training seminars, etc. on human rights-related issues, aimed at, amongst others, teachers, civil servants and NGOs. A teaching programme on ethnic and cultural diversity had only recently been carried out. Finally, the creation of a Web site in 1996 would enable more people to have cheap access to information provided by the Institute.

28. Replying to a request from Mr. Yutsis for clarification of the following statement in paragraph 387 of the report: "the main objective of Estonia's cultural policy is to secure the continuance of the traditions of Estonian national culture [and] the exercise of the cultural autonomy of national minorities", she said that one had to take into account the country's history in order to understand that position. When Estonia had regained independence in 1991, it had been on the brink of losing its own national culture, which had led the authorities to take steps in order to recover the foundations of that culture. At the same time, the State party encouraged minorities to engage in cultural activities and retain their links with their countries of origin. In 1997, it had established a Council for National Minority Cultures under the Ministry of Culture, which took part in decision-making relating to support for minority cultural initiatives and coordinated their activities. More than 60 cultural societies and some projects devised by them currently received financial support from the Government. Nevertheless, safeguarding Estonian culture remained the main priority.

29. She concluded by saying that her delegation had taken careful note of the Committee's recommendations concerning Estonia's accession to the various international instruments, and would pass them on to its Government. The possibility of making the declaration provided for in

article 14 of the Convention would be seriously considered. She expressed her thanks to the members of the Committee for the spirit of cooperation and the attention they had shown to her delegation.

30. Mr. ABOUL-NASR welcomed the constructive dialogue with the delegation, particularly in view of the fact that it was the first time that the Committee had met an Estonian delegation.

31. Nevertheless, he was not convinced by the arguments expressed by one member of the delegation concerning immigration quotas. It was not satisfactory to refer to the policies applied by certain European countries, since the Committee's mandate was not to oversee European standards but to monitor application of the provisions of the Convention. To establish immigration quotas linked to nationality was a form of discrimination in the treatment of non-nationals, which, in his view, constituted a violation of the Convention. He would also be interested to know if the minorities referred to in paragraph 53 of the report enjoyed equal treatment and asked if the delegation could provide information in that respect in their next report. Simply for the purposes of information, he asked whether there was a national minority of Muslim faith, as was the case in Finland.

32. Mr. DIACONU said that the dialogue initiated with the delegation reassured him that the State party was adopting the right attitude in its attempts to resolve the problems identified during the current discussion. However, he would like to revert to the issue of the election result which had been overturned by a court on the grounds that the winner had not been sufficiently proficient in the language. He was surprised that the decision had been taken by a court, even though no offence had been committed. He urged the State party to review the provisions for taking such decisions and asked the Government to take into account the fact that the person concerned had been democratically elected.

33. He pointed out that in the report dealing with the definition of minorities (E/CN.4/Sub.2/1992/37), the idea of a minority was not linked to citizenship. The definition was more general, referring to people and not citizens. He asked the delegation to re-examine that issue.

34. Mr. de GOUTTES shared Mr. Aboul-Nasr's sentiments about the quality of the delegation's contribution, which he had found most professional. He was impressed by the Estonian Government's intention to look into the possibility of making the declaration provided for in article 14 of the Convention.

35. He would be interested to know whether any racist associations existed in Estonia and, if so, whether and how they were punished. It was important for the Committee to know the details of any sentences.

36. Mr. SHAHI said that he associated himself with the remarks concerning the professionalism of the delegation. He was surprised to learn that the population of Estonia was steadily declining and would be grateful if the situation could be clarified. It had also been stated in the report that in 1934 the Tartars had numbered 166. From which country had the 3,271 Tartars living in Estonia today emigrated?

37. Mr. RECHETOV said that the Estonian delegation had replied to all the questions from members of the Committee, but that the answers had not been entirely clear on certain points.

38. He failed to understand why the presence of retired Red Army soldiers from the former Soviet Union in Estonian territory made it impossible to buy small arms in Estonia. Did that mean that the authorities feared that the retired soldiers might form a secret army?

39. Paragraph 87 of the report had stated that section 611 of the Estonian Criminal Code established punishment by deprivation of liberty from 8 to 15 years or life for perpetrating crimes against humanity, such as deportation and deprivation or restriction of the economic, political and social rights of native inhabitants during occupation or annexation. He failed to understand why that provision only seemed to apply to crimes committed during the occupation or annexation of Estonia. Had a mistake been made in the translation? He would also be interested to know if, given the size of the Russian-speaking population, the Criminal Code had been published in Russian.

40. He would appreciate clarification of the status of aliens, given that the existing immigration quotas prevented them from obtaining Estonian citizenship and therefore from enjoying economic, political and social rights. The problem was even more serious if one considered that many such aliens had been legally residing in Estonia for many years.

41. Some Committee members had identified certain Estonian legal provisions that were discriminatory towards aliens. The delegation had replied that a number of respectable Western European countries had similar laws. The dialogue between Estonia and the Committee would not be enriched by references to other countries' inadequacies, even if certain countries whose legislation failed to recognize national minorities had been trying to rectify the legal situation in that regard. At any rate, it was inadvisable for Estonia to look to imperfect examples for inspiration.

42. Ms. JANUARY-BARDILL said that, as she understood it, the general thrust of Estonian policy reflected a cultural approach based on the recognition of the existence of separate but equal elements, and the attempted integration of those elements into national life. In her view, that approach prevented certain sections of the population from participating in national political life, including in decisions concerning the allocation of public resources. She feared that it constituted a form of involuntary discrimination, stopping some groups of people from participating in the political decision-making process.

43. The CHAIRMAN invited the Estonian delegation to reply to the questions and observations of the Committee members.

44. Mr. KULL (Estonia), replying to a question from Mr. Aboul-Nasr, said that the immigration quotas were an element of Estonia's immigration-control system. When it had been introduced in the early 1990s, the system had contained identical provisions for all States, except for members of the European Community and the European Free Trade Association (EFTA), which had signed bilateral agreements with Estonia concerning the movement of labour (covering work and residence permits). Since then, Estonia had ratified the Single European Act and the Maastricht Treaty, which contained provisions relating to the movement of persons and

residence rights. Those provisions could be discriminatory towards third country nationals. In view of that, could the Committee consider examining all bilateral and regional agreements or treaties in order to establish whether they were consistent with the Convention?

45. Estonia did not differentiate between aliens on grounds of racial, ethnic or national origin, but on the basis of existing agreements with the States of which they were nationals.

46. Referring to a question from Mr. Rechetov concerning quotas for the acquisition of Estonian citizenship, he said that there must have been a misinterpretation of the report, since his country had never established quotas in that regard, nor did it intend to do so.

47. Ms. JAANI (Estonia) said that her delegation would be glad to supply the Committee with the additional information requested on various aspects of the application of the Convention in her country. She accepted the criticisms from Committee members concerning some effects of the agreements between Estonia and the European Union that were inconsistent with the Convention.

48. Mr. YUTZIS (Country Rapporteur) said that Estonia's recent history, marked by annexation and occupation by the Soviet Union, which had completely dismantled the State system and society of the Republic of Estonia (para. 16), was a fundamental element for the Committee to take into consideration, for it profoundly affected the process of national reconstruction initiated in Estonia.

49. Since the future was most important for the application of the Convention and the reconstruction of the country, he hoped that Estonia would ensure that its definition of minority did not foster assimilation to the detriment of the integration of national minorities.

50. Regarding the effects of the regional agreements to which Estonia was party, he said that the Committee had no reason to believe that the Treaty of Maastricht would be a positive influence in terms of the application of the Convention. It classified people into distinct categories depending on their nationality, which contradicted the aims of article 2 of the Convention, namely, to encourage means of eliminating barriers between races and to discourage anything which tended to strengthen racial division.

51. In Estonia's next periodic report, he would welcome as complete information as possible regarding the enjoyment of the rights listed in article 5 of the Convention. It would be useful for the Committee to have some statistics on, among other things, the number of citizens from the Russian minority and from other minorities receiving secondary or university education, the situation of those groups in the employment sector, and the number of stateless persons who had obtained Estonian citizenship.

52. He offered his congratulations to the delegation and to the Estonian people on their remarkable national reconstruction effort, on the quality of the report and the information provided orally to the Committee, while he hoped that the less comprehensive aspects would be elaborated upon in Estonia's next report.

53. The CHAIRMAN thanked the Estonian delegation for the remarkable spirit in which it had taken part in the consideration of the initial, second, third and fourth periodic reports of its country. He drew attention to the fact that States parties were required, under article 9 (1) of the Convention, to submit regular periodic reports to the Committee, and pointed out that the next report of Estonia would fall on 19 November 2000.

54. The Committee had thereby concluded its consideration of the initial, second, third and fourth periodic reports of Estonia.

55. The delegation of Estonia withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

Venue of the fifty-ninth session of the Committee (continued)

56. The CHAIRMAN reminded members that, at its 1386th meeting, the Committee had in principle decided to hold its August 2001 session in South Africa to coincide with the World Conference against Racism, subject to examination of the financial aspects by the High Commissioner for Human Rights in consultation with the Secretariat.

57. As for the necessary agreement by South Africa, Ms. January-Bardill had promised to contact the Permanent Mission of South Africa to the United Nations Office at Geneva and other international organizations in Switzerland. He invited her to report on those contacts.

58. Ms. JANUARY-BARDILL said that she had communicated the Committee's proposal to the Permanent Representative of South Africa to the United Nations Office at Geneva, who had been very enthusiastic about the idea. He had promised to commend it to his Government as soon as the Permanent Mission had received an official letter on the subject from UNOG.

59. The CHAIRMAN said that the Committee members would be kept duly informed of the financial aspects of the proposal and that the High Commisioner's Office would send an official letter on the issue as soon as possible to the Permanent Mission of South Africa to UNOG.

The public part of the meeting rose at 12.20 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1389th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 17 March 2000, at 3 p.m.

Chairman: Mr. SHERIFIS

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CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Fourteenth periodic report of Lesotho

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1389/Add.1

This record is subject to correction.

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fourteenth periodic report of Lesotho (CERD/C/337/Add.1; HRI/CORE/1/Add.98)

1. At the invitation of the Chairman, Mr. Maema, Ms. Lebotsa, Ms. Lesoli and Ms. Kotela (Lesotho) took places at the Committee table.

2. Mr. MAEMA (Lesotho), introducing Lesotho's fourteenth periodic report (CERD/C/337/Add.1), thanked the Committee for its consideration in allowing his Government to postpone the presentation of its report, thus allowing time for an inter-ministerial committee to prepare it thoroughly. Past experience had shown that United Nations technical assistance went a long way in equipping officials in Lesotho with the requisite reporting skills.

3. Lesotho had an estimated population of 2 million, which coexisted with a small minority of foreign immigrants composed of Europeans, Asians, Americans and Africans from South Africa, Botswana, Namibia, Zimbabwe, Mozambique, Tanzania, Malawi and Uganda. The two official languages were English and Sesotho. The foreign immigrant population enjoyed the right to speak their respective languages of origin without any restrictions.

4. The Constitution of Lesotho prohibited racial discrimination. Section 18 (4) and (5) thereof did contain exceptions, but those did not constitute discrimination per se. For example, they concerned persons who were not citizens of Lesotho or were related to the application of the law in respect of marriage, divorce, adoption, burial, inheritance and similar matters. But nothing in section 18 (4) and (5) could prevent laws from being passed to promote a society based on equality and justice for all citizens, or the removal of other discriminatory legislation.

5. Turning to legislation and practice, he said that the 1971 Race Relations Order, which prohibited racial discrimination in public places, had been an expression of his Government's strong objection to South Africa's apartheid policy at the time. Unfortunately, the Order had confined itself to discrimination in places open to the public. Moreover, it did not make provision for aggrieved individuals to institute proceedings directly in court without making a prior presentation to the Minister, nor did it impose penalties for violations of its provisions.

6. Clearly, the Order had not been amended in accordance with the Committee's General Recommendation I of 24 February 1972, or in the aftermath of the unfortunate rioting in Lesotho in 1991 and 1998 directed against foreign immigrants, which had resulted in loss of life and mass destruction of property in districts with a large foreign immigrant presence.

7. Following the 1998 events, the Minister for Foreign Affairs had stated that the Government could not condone group violence perpetrated against foreign immigrants or the dispossession of their property, and he had reassured the foreign population that the Government was committed to providing for the security of all nationalities living in Lesotho.

On 16 March 2000, the Minister had warned certain opposition leaders to stop threatening foreign businessmen with the destruction of their businesses, and the police had been put on alert to ensure their protection.

8. Concerning the strike in Butha Buthe, in the northern district, in which the police had intervened and a number of workers had been killed, a commission of inquiry had examined several complaints of discrimination at the workplace and in the areas of salaries, medical treatment and social services.

9. On a positive note, he said that intermarriage between Basothos and other nationalities was socially accepted. In that connection, the 1952 adoption proclamation, which prohibited Basotho nationals from adopting children while granting whites that same right, was to be reviewed by the Law Reform Commission.

10. With regard to the hiring of foreigners, he said that foreign immigrants were employed in professions where national expertise was lacking, such as in the fields of medicine and engineering. That showed his Government's favourable attitude towards hiring foreign immigrants.

11. He had brought a revised version of the report, which superseded the one submitted in 1999. He wished to make it available to the Committee.

12. Ms. McDOUGALL (Country Rapporteur), welcoming the delegation of Lesotho, noted that the fourteenth periodic report combined the eight reports due since the submission of its fifth and sixth reports in 1982.

13. Beginning with a general point, she noted that, linguistically, the population of Lesotho was almost entirely Sesotho-speaking, with small European, Asian and Xhosa-speaking minorities. According to statistics, 99.7 per cent of the population was Sotho, with 1,600 European and 800 Asians. It was unclear what proportion of the European and Asian population had Lesotho nationality, because the report contained no such data. More specific information was needed on the small minority of Indian, Xhosa and Phuthi (para. 28) and the small minority of Basotho of Indian origin (para. 16). In future reports, it would be useful for the State party to include more specific demographic information.

14. She noted that there was a growing number of manufacturing operations owned by Asian nationals, and that some of those businesses had had to deal with disputes about working conditions that had given rise to racial tension. According to her information, in one particular incident in February 1998 the factory management of a Taiwanese-owned garment factory had been taken hostage by employees during a strike about wages and working conditions. The police had intervened and, in clashes with strikers, one person had been killed and several seriously injured. In the months following the incident, as many as 100 Asian nationals fearing ethnic prejudice had fled Lesotho. According to credible sources, tensions between Lesotho nationals and Asian and white South African factory owners remained high. Could the delegation provide further information on the situation of Asian nationals in Lesotho?

15. Concerning implementation of article 2 of the Convention, the fourteenth periodic report of Lesotho outlined various measures prohibiting racial discrimination against persons or groups and ensuring that the authorities complied with the provisions of the Convention. However, it was not always clear whether the policies referred to in the report were mandated by legislation.

16. The report stated that one goal of the Ministry of Education was to incorporate cultural values in school activities (para. 8 (d)). It would be useful to know whether such cultural values were confined to those of traditional Sesotho-speaking culture or whether Asian and European cultures were also given attention in the educational system. The State party reported that there had been difficulties in some areas as certain classes of people had established schools and there had been some discrimination, in particular with regard to an Islamic school which had been forced to close (para. 21). The Committee would appreciate it if the delegation of Lesotho could provide further information on the subject.

17. The report highlighted section 18 of the Constitution, which protected all persons from racial discrimination (para. 11). Two parts of section 18 required further elaboration. Section 18 (1) stated that subject to the provisions of subsections (4) and (5), no law could make any provision which was discriminatory either of itself or in its effect, but the report did not contain the actual wording of subsections (4) and (5). Similarly, section 18 (2) stated that subject to the provisions of subsection (6), no person could be treated in a discriminatory manner by any written law or in the performance of the functions of any public office or any public authority. Could the full text of section 18 be made available?

18. Likewise, the report did not contain any specific measures taken to give effect to the undertaking not to sponsor, defend or support racial discrimination by any persons. Moreover, it stated that there had been no measures to review governmental, national and local policies or to amend, rescind or nullify any laws or regulations which had the effect of creating or perpetrating racial discrimination (para. 16) and that there was no single organization which dealt with the integration of the various racial groups or the elimination of barriers between races (para. 17). In light of recent tensions concerning Islamic schools and between Asian factory owners and Basotho workers, she asked the delegation of Lesotho to elaborate on those points. Was any mechanism in place to review legislation and promote racial equality?

19. Turning to implementation of article 4 of the Convention, she said that the fourteenth periodic report cited the 1971 Race Relations Order as a measure designed to eradicate all incitement to, or acts of, racial discrimination by stipulating that anyone who deliberately aided, induced or incited any person to discriminate on racial grounds was guilty of an offence (para. 34), but it did not provide the actual text of the section, nor did it mention any provision specifically making it a crime to participate in organizations which promoted and incited racial discrimination. Whereas "deliberate" acts might be covered by the 1971 Order, it was unclear whether participation in a racist organization alone would be regarded as an offence under Lesotho law.

20. Could the delegation of Lesotho explain whether it had considered implementing legislation to fulfil its obligations under article 4 (a) and (b)? Although the report contained general descriptions of measures relating to article 4 (a), it did not address the Committee's General Recommendation XV on making the financing of racist activities a crime.

21. She asked the State party whether it had implemented any specific penal legislation pursuant to article 4 (a) and (b) of the Convention.

22. On the implementation of article 5 of the Convention, it was unclear whether equal treatment before the courts extended to members of minority groups, such as citizens of Indian origin. Was customary law also applied to foreigners? How was it determined whether customary or general law applied? How had the problem of inheritance law been resolved?

23. Could the delegation of Lesotho explain whether the right to nationality applied to all persons as provided by article 5 (d) (iii) of the Convention?

24. With regard to implementation of article 6 of the Convention, the report stated that there was a constitutional provision, a statute and an ombudsman specifically addressing complaints of racial discrimination, but that not a single complaint had been made at the time of the report's submission (paras. 70-72). Had any such complaints been lodged in the two years since the report had been filed? If so, what types of discriminatory acts had been the subject of the complaints, and how had the cases been decided? What steps had Lesotho taken to educate citizens about their rights under the Convention and the availability of redress mechanisms?

25. As for implementation of article 7 of the Convention, the State party reported that there was no information being disseminated to promote better understanding, tolerance and friendship within the racial and ethnic groups in the country (para. 73). Was that still the case? Had any programmes been set up to ensure compliance with Lesotho's obligations under article 7?

26. The report asserted that there was no racial discrimination in Lesotho and that no such complaints had been lodged. Even if that were true, it would not release the State party from its obligation under the Convention to put into place effective legislation, policies and programmes to combat racial discrimination.

27. She looked forward to pursuing the dialogue with Lesotho.

28. Mr. VALENCIA RODRIGUEZ said that although the Committee had not been provided with detailed demographic information, it was aware of the existence of Indian, Xhosa and Phuthi minorities in Lesotho; the implementation of the Convention was therefore important in spite of the State party's assertion that racial discrimination was unknown in the country.

29. What was the situation of the Convention vis-à-vis domestic legislation in Lesotho? Were special implementing provisions required for its application? Could it be invoked in the domestic courts? Which of the two parallel legal systems was applied with respect to the instrument?

30. Aside from the Race Relations Order of 1971, was there any legislation which put into effect the constitutional provision that prohibited racial discrimination and proclaimed equality before the law?

31. He would welcome further clarifications regarding article 18.7 of the Constitution, which prohibited discrimination with regard to access to public services and facilities - an aspect to

which the Committee attached great importance. More information was also required on the scope of article 5 of the Race Relations Order to ascertain whether it was in compliance with article 4 (a) and (b) of the Convention. Also, did the Criminal Code contain provisions in relation to article 5 of the Race Relations Order?

32. He noted with satisfaction that the Labour Code prohibited any discriminatory practice on racial or ethnic grounds and that Lesotho had acceded to most of the important International Labour Organization Conventions. However, he would like some information on the situation of minority groups with respect to labour issues.

33. Paragraph 50 of the report referred to problems that arose in connection with inheritance matters owing to the country's dual legal system. The Government might wish to look into the possibility of harmonizing its legal system, which would help to resolve such problems as well as to ensure the enjoyment of other rights under article 5 of the Convention.

34. He commended the Lesotho Government on the special attention it was paying to health and education matters but would welcome further information on the subject. What was meant by the statement in paragraph 9 to the effect that schools were multiracial from primary school to university level? What percentage of children belonging to minority groups attended school? How were the principles of racial tolerance and friendship taught?

35. More information was needed on the application of article 6 of the Convention; in particular he would like to see the text of article 22.1 of the Constitution. From the information contained in paragraphs 70 to 72 of the report, it seemed that persons alleging to be victims of discrimination could apply to the High Court to seek redress and compensation.

36. Could the delegation shed further light on the Islamic English Medium School v. Abdul Razak Osman and others case, referred to in paragraph 21 of the report, since it seemed that issues other than racial discrimination were involved.

37. The report provided scant information on Lesotho's compliance with its obligations under article 7 of the Convention. Such information was essential given the existence of ethnic minorities in the country, notwithstanding the State party's assertion that racial discrimination was unknown. In conclusion, he recommended that the State party's report and the Committee's concluding observations thereon should be adequately disseminated.

38. Mr. de GOUTTES, after welcoming the opportunity for renewed dialogue with the Government of Lesotho, stressed that the Committee would not be satisfied with the assertion that no racial discrimination existed in the country. No State party was completely free of the problem, whence the need for appropriate legislation, not least as a preventive measure. Referring to paragraph 4 of the report, which outlined Lesotho's very complex dual legal system, he asked what the criteria were for applying customary or common law and whether such criteria were sufficiently clear. As for legislation relating to racial discrimination, mention had been made in the report of the Race Relations Order of 1971; however, could sanctions be applied in cases of racial discrimination under customary law?

39. According to paragraph 11 of the report, the Constitution protected all persons against racial discrimination, subject to the provisions of subsections 4, 5 and 6 thereof. Could the delegation shed some light on the contents of those subsections? He would also welcome some clarification regarding the instances of racial problems in some schools, referred to in paragraph 21 of the report. Which sectors of the population were generally the target of such discrimination?

40. Mr. FALL, referring to the information provided in paragraphs 47 and 50 of the report relating to the Marriage Act and inheritance matters respectively, sought clarification regarding inheritance matters in Lesotho, particularly since they often caused problems in African countries.

41. Mr. DIACONU said that when considering the report it was important to remember that Lesotho, landlocked by South Africa, was a very small country, which had suffered greatly from apartheid, even though it had not espoused that policy. Given its experience in such matters, Lesotho was well aware of racial discrimination problems and well prepared to combat them. Was there a land reform programme in Lesotho and, in the affirmative, had any particular problems been encountered such as unequal land distribution on racial grounds?

42. According to the last sentence of the report, no information was being disseminated in order to promote better understanding and tolerance between different racial and ethnic groups. However that was an essential task for all countries, great and small, irrespective of the existence of race-related problems.

43. Mr. NOBEL said that he had found it particularly difficult to prepare for the dialogue with the State party, since the information provided in the report was not up to date, especially with regard to relevant political developments. His remark was not intended in any way to be a criticism; he underlined the Committee's great interest in and sympathy for Lesotho's efforts with respect to racial discrimination, as well as its satisfaction that the dialogue with the Government had finally resumed.

44. The CHAIRMAN, speaking on behalf of the Committee as a whole, endorsed Mr. Nobel's comments. In particular, he welcomed the fact that the Lesotho Government had sent such a high-level delegation for the consideration of its fourteenth periodic report. He trusted that it would continue to report on a regular basis to the Committee, in accordance with its obligations under article 9 of the Convention.

45. The Lesotho delegation withdrew.

The public part of the meeting rose at 4.25 p.m.